

105TH CONGRESS
2D SESSION

H. R. 3989

To provide for the enactment of user fees proposed by the President in his budget submission under section 1105(a) of title 31, United States Code, for fiscal year 1999.

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1998

Mr. SOLOMON introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, Agriculture, Resources, the Judiciary, Transportation and Infrastructure, Banking and Financial Services, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the enactment of user fees proposed by the President in his budget submission under section 1105(a) of title 31, United States Code, for fiscal year 1999.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “User Fee Act of
5 1998”.

TITLE I—FOOD AND DRUG ADMINISTRATION FEES

SEC. 101. REFERENCES IN THIS TITLE.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

PART A—USER FEES

SEC. 111. FEES RELATED TO FOOD ADDITIVE PETITIONS.

(a) TYPES OF FEES.—Beginning in fiscal year 1999, the Secretary of Health and Human Services (referred to in this title as the “Secretary”) shall establish, in accordance with section 121, fees to cover activities of the Food and Drug Administration in connection with—

(1) petitions for food additives submitted pursuant to section 409(b) (21 U.S.C. 438(b));

(2) notifications to the Secretary for food contact substances submitted pursuant to section 409(h) (21 U.S.C. 438(h));

(3) petitions for color additives submitted pursuant to section 721 (21 U.S.C. 379e);

(4) petitions, submitted pursuant to sections 201(s), and 701(a) (21 U.S.C. 321(s), 371(a)) and regulations thereunder, for affirmation that a sub-

1 stance that becomes, or may reasonably be expected
2 to become, a component of food is generally recog-
3 nized as safe; and

4 (5) notifications to the Secretary, submitted
5 pursuant to sections 201(s) and 701(a) and regula-
6 tions thereunder asserting that a substance that be-
7 comes, or may reasonably be expected to become, a
8 component of food is generally recognized as safe.

9 The fees shall be payable at the time the petition or notifi-
10 cation is submitted to the Secretary.

11 (b) FEE AMOUNTS AND AVAILABILITY.—Subject to
12 section 121(a)(1)(A), fees for the activities specified in
13 subsection (a) shall be set for each fiscal year at amounts
14 that the Secretary reasonably estimates to be sufficient
15 to generate revenues totaling \$10,335,000 for each of fis-
16 cal years 1999 through 2003, and shall remain available
17 until expended, to the extent provided in appropriations
18 Acts, for the costs of carrying out such activities.

19 **SEC. 112. FEES RELATED TO GENERIC DRUGS.**

20 (a) TYPES OF FEES.—Beginning in fiscal year 1999,
21 the Secretary shall establish, in accordance with section
22 121, fees to cover activities of the Food and Drug Admin-
23 istration in connection with applications for approval for
24 new drugs submitted pursuant to section 505(j) (21

1 U.S.C. 355). The fees shall be payable at the time the
 2 application for approval is submitted to the Secretary.

3 (b) FEE AMOUNTS AND AVAILABILITY.—Subject to
 4 section 121(a)(1)(A), fees for the activities specified in
 5 subsection (a) shall be set for each fiscal year at amounts
 6 that the Secretary reasonably estimates to be sufficient
 7 to generate revenues totaling \$12,377,000 for each of fis-
 8 cal years 1999 through 2003, and shall remain available
 9 until expended, to the extent provided in appropriations
 10 Acts, for the costs of carrying out such activities.

11 **SEC. 113. FEES RELATED TO ANIMAL DRUGS.**

12 (a) TYPES OF FEES.—Beginning in fiscal year 1999,
 13 the Secretary shall establish, in accordance with section
 14 121, fees to cover activities of the Food and Drug Admin-
 15 istration in connection with—

16 (1) applications, including supplements, for new
 17 animal drugs submitted pursuant to section
 18 512(b)(1) (21 U.S.C. 360b(b)(1), including applica-
 19 tion and other submissions for import tolerances, as
 20 described in section 512(a)(6) (21 U.S.C.
 21 360b(a)(b));

22 (2) abbreviated applications, including supple-
 23 ments, for new animal drugs submitted pursuant to
 24 section 512(b)(2) (21 U.S.C. 360b(b)(2)); and

1 (3) applications for licenses to manufacture ani-
2 mal feeds bearing or containing new animal drugs,
3 submitted pursuant to section 512(m) (21 U.S.C.
4 360b(m)).

5 The fees shall be payable at the time the application for
6 approval is submitted to the Secretary.

7 (b) FEE AMOUNTS AND AVAILABILITY.—Subject to
8 section 121(a)(1)(A), fees for the activities specified in
9 subsection (a) shall be set for each fiscal year at amounts
10 that the Secretary reasonably estimates to be sufficient
11 to generate revenues totaling \$10,100,000 for each of fis-
12 cal years 1999 through 2003, and shall remain available
13 until expended, to the extent provided in appropriations
14 Acts, for the costs of carrying out such activities.

15 **SEC. 114. FEES RELATED TO MEDICAL DEVICES.**

16 (a) TYPES OF FEES.—Beginning in fiscal year 1999,
17 the Secretary shall establish, in accordance with section
18 121, fees to cover activities of the Food and Drug Admin-
19 istration in connection with applications for—

20 (1) premarket approval of devices (including
21 proposed product development protocols) submitted
22 under section 515 (21 U.S.C. 360e);

23 (2) supplements to approved premarket ap-
24 proval applications for which clinical data are re-
25 quired;

1 (3) supplements to approved premarket ap-
2 proval applications for which clinical data are not re-
3 quired; and

4 (4) device premarket notification submissions
5 under section 510(k) (21 U.S.C. 360(k)).

6 The fees shall be payable at the time the application is
7 submitted to the Secretary.

8 (b) FEE AMOUNTS.—The fees required under sub-
9 section (a) shall be as follows:

10 (1) \$175,000 for applications described in sub-
11 section (a)(1).

12 (2) \$100,000 for supplements described in sub-
13 section (a)(2).

14 (3) \$6,000 for supplements described in sub-
15 section (a)(3).

16 (4) \$4,500 for submissions described in sub-
17 section (a)(4).

18 (c) FEE AMOUNTS AND AVAILABILITY.—Subject to
19 section 121(a)(1)(A), fees for the activities specified in
20 subsection (a) shall be set each fiscal year in accordance
21 with section 121 to amounts that the Secretary reasonably
22 estimates to be sufficient to generate revenues totaling
23 \$25,000,000 for each of fiscal years 1999 through 2003,
24 and shall remain available until expended, to the extent

1 provided in appropriations Acts, for the costs of carrying
2 out such activities.

3 **SEC. 115. FEES RELATED TO IMPORT INSPECTIONS AND EX-**
4 **PORT CERTIFICATES.**

5 (a) TYPES OF FEES.—Beginning in fiscal year 1999,
6 the Secretary shall establish, in accordance with section
7 121, fees to cover activities of the Food and Drug Admin-
8 istration in connection with the review of imported human
9 and animal drugs, medical devices, and food subject to
10 regulation under the Federal Food, Drug, and Cosmetic
11 Act (including activities relating to admission or detention
12 of, refusal of entry to, and the issuance of export certifi-
13 cates for such items). The fees shall be payable at the time
14 of each import entry or request for export certificates for
15 shipment of the item.

16 (b) FEE AMOUNTS AND AVAILABILITY.—Subject to
17 section 121(a)(1)(A), fees for the activities specified in
18 subsection (a) shall be set for each fiscal year at amounts
19 that the Secretary reasonably estimates to be sufficient
20 to generate revenues totaling \$12,000,000 for each of fis-
21 cal years 1999 through 2003, and shall remain available
22 until expended, to the extent provided in appropriations
23 Acts, for the costs of carrying out such activities.

1 (c) COLLECTIONS.—The fees authorized by this sec-
2 tion shall be collected on behalf of the Secretary by the
3 United States Customs Service.

4 **SEC. 116. FEES RELATED TO ENTITIES UNDER FDA'S OVER-**
5 **SIGHT.**

6 (a) TYPES OF FEES.—Beginning in fiscal year 1999,
7 the Secretary shall establish, in accordance with section
8 121, fees to cover activities of the Food and Drug Admin-
9 istration in connection with regulatory activities with re-
10 spect to regulated products approved for marketing. The
11 Secretary shall assess fees for monitoring establishments
12 that are subject to regulation (including inspections con-
13 ducted pursuant to section 704 (21 U.S.C. 374), and other
14 regulatory activities), as follows:

15 (1) FOOD ESTABLISHMENTS.—An establish-
16 ment subject to inspection under section 704 (21
17 U.S.C. 374) because it manufactures, processes,
18 packs, or holds food for (or after) shipment in inter-
19 state commerce, is subject to assessment of annual
20 fees under this section. The Secretary may impose
21 an annual registration requirement on such an es-
22 tablishment to facilitate assessment and collection of
23 the fees.

24 (2) DRUG AND DEVICE ESTABLISHMENTS.—An
25 establishment subject to the annual registration re-

1 requirement under section 510 (21 U.S.C. 360) (with
2 respect to products other than those for which such
3 an establishment is subject to section 736 (21
4 U.S.C. 379h) is subject to assessment of annual fees
5 under this section at the time of registration.

6 (3) COSMETIC ESTABLISHMENTS.—An estab-
7 lishment subject to inspection under section 704 (21
8 U.S.C. 374) because it manufactures, processes,
9 packs, or holds cosmetics for (or after) shipment in
10 interstate commerce is subject to assessment of an-
11 nual fees under this section. The Secretary may im-
12 pose an annual registration requirement on such an
13 establishment to facilitate assessment and collection
14 of the fees.

15 This section does not affect any other statutory or regu-
16 latory requirements imposed on these entities.

17 (b) FEE AMOUNTS AND AVAILABILITY.—Subject to
18 section 121(a)(1)(A), fees for the activities specified in
19 subsection (a) shall be set for each fiscal year at amounts
20 that the Secretary reasonably estimates to be sufficient
21 to generate revenues totaling \$57,905,000 for each of fis-
22 cal years 1999 through 2003, and shall remain available
23 until expended, to the extent provided in appropriations
24 Acts, for the costs of carrying out such activities.

PART B—GENERAL PROVISIONS

SEC. 121. GENERAL PROVISIONS RELATED TO USER FEES.

(a) ASSESSMENT OF FEES.—

(1) FEE AMOUNTS.—

(A) COLLECTIONS SUBJECT TO APPROPRIATIONS.—The fees authorized by this Act shall be collected in each fiscal year as provided in appropriation Acts for such fiscal year.

(B) RELATION TO COSTS.—Fees assessed and collected under part A shall not exceed amounts which the Secretary estimates to be sufficient to cover costs of the Food and Drug Administration associated with the activities for which the fees are collected (including costs of assessments and collection of the fees).

(C) VARIATION FACTORS.—The amount of fees established may vary to reflect the cost of those activities with respect to different entities or groups of entities, including the type and size of entity, volume of business, and other factors the Secretary may find appropriate.

(2) FEE DETERMINATION AND PUBLICATION.—

The Secretary shall annually establish fee amounts under part A, and shall publish schedules of such fees in the Federal Register as an interim final rule.

The establishment and publication of such fees shall

1 be solely in the discretion of the Secretary and shall
2 not be subject to the requirements of sections 553
3 and 801 of title 5 of the United States Code and
4 shall not be reviewable.

5 (3) REDUCTION OR WAIVER OF FEES.—The
6 Secretary may provide for reduction or waiver of the
7 fees under part A in exceptional circumstances in
8 the public interest.

9 (b) CREDITING AND AVAILABILITY OF FEES.—

10 (1) IN GENERAL.—Fees collected pursuant to
11 part A shall be credited to a special fund in the
12 Treasury for user fees collected by the Food and
13 Drug Administration. The fees shall be available in
14 the amounts specified in appropriations Acts, for
15 salaries and expenses necessary to carry out the re-
16 sponsibilities of the Food and Drug Administration
17 in connection with the activities for which such fees
18 were collected, including the conduct of scientific re-
19 search, development of methods of analysis, pur-
20 chase of chemicals, fixtures, furniture, and scientific
21 equipment and apparatus, development and acquisi-
22 tion of information technology and information man-
23 agement systems, acquisition, maintenance, and re-
24 pair of real property, and expenses of advisory com-
25 mittees.

1 (2) FEES AVAILABLE ONLY FOR THE CATEGORY
2 OF ACTIVITY FOR WHICH ASSESSED.—Fees collected
3 for each category of activities specified in part A
4 shall be separately accounted for, and shall be used
5 only to finance the costs related to carrying out re-
6 sponsibilities in connection with the same category
7 of activities for which the fees were collected.

8 (c) COLLECTION OF UNPAID FEES.—If the Secretary
9 does not receive payment of a fee assessed under sub-
10 section (a) within 30 days after it is due, that fee shall
11 be treated as a claim of the United States Government
12 subject to the provisions of subchapter II of chapter 37
13 of title 31 of the United States Code.

14 **SEC. 122. AGENCY PLAN AND ANNUAL REPORTING RE-**
15 **QUIREMENTS.**

16 The agency plan for the Food and Drug Administra-
17 tion required under section 903(f) (21 U.S.C. 393(f)) shall
18 include objectives with respect to the assessment, collec-
19 tion, and use of the fees authorized under part A, and
20 the annual report required by section 903(g) (21 U.S.C.
21 (g)) shall describe the performance of the Secretary with
22 respect to such objectives.

TITLE II—MEDICARE ADMINISTRATIVE FEES

SEC. 201. COLLECTION OF FEES FROM MEDICARE+CHOICE ORGANIZATIONS FOR CONTRACT INITIATION AND RENEWAL.

Section 1857 of the Social Security Act (42 U.S.C. 1395w–27) is amended by adding after subsection (h) the following new subsection:

“(i) FEES FOR CONTRACT ISSUANCE AND RENEWAL
AND ONGOING MONITORING.—

“(1) AUTHORITY TO IMPOSE FEES.—The Secretary shall impose, to the extent provided in appropriation Acts—

“(A) fees for initial Medicare+Choice contracts under this part; and

“(B) annual fees for renewal of such contracts and monitoring of the ongoing operations of Medicare+Choice organizations.

“(2) ASSESSMENT OF FEES.—

“(A) TYPES OF FEES.—

“(i) INITIATION FEES.—Fee amounts assessed against a member of a class of organizations pursuant to paragraph (1)(A) shall not exceed the Secretary’s reasonable estimate of the average cost of initiating a

1 Medicare+Choice contract for an organiza-
2 tion in such class.

3 “(ii) RENEWAL AND MONITORING
4 FEES.—Fee amounts assessed pursuant to
5 paragraph (1)(B) against members of a
6 class of organizations shall not exceed the
7 amount which the Secretary reasonably es-
8 timates will generate total revenues suffi-
9 cient to cover total annual costs for renew-
10 ing contracts and performing ongoing mon-
11 itoring with respect to such class.

12 “(B) FEE DETERMINATION AND PUBLICA-
13 TION.—

14 “(i) IN GENERAL.—The Secretary
15 shall annually establish fee amounts under
16 this subsection, and shall annually publish
17 schedules of such fees in the Federal Reg-
18 ister. The establishment and publication of
19 such fees shall be solely in the discretion of
20 the Secretary and shall not be subject to
21 the requirements of sections 553 and 801
22 of title 5, United States Code, and shall
23 not be reviewable. Previously published fee
24 schedules shall remain in effect until new
25 schedules are effective.

1 “(ii) REDUCTION OR WAIVER OF
2 FEES.—The Secretary may provide for re-
3 duction or waiver of the fees under this
4 subsection in exceptional circumstances in
5 the public interest.

6 “(3) COLLECTION AND CREDITING OF FEES.—

7 “(A) INITIAL FEES.—Fees assessed
8 against an organization pursuant to paragraph
9 (1)(A) shall be payable upon submission of the
10 application to participate in the program under
11 this title as a Medicare+Choice organization
12 (and shall apply whether or not the Secretary
13 approves such application) and shall be credited
14 to the Health Care Financing Administration
15 Program Management Account.

16 “(B) RENEWAL AND MONITORING FEES.—
17 Fees assessed against an organization pursuant
18 to paragraph (1)(B) shall be payable annually
19 and may be deducted from amounts otherwise
20 payable from a Trust Fund under this title to
21 such organization. Such fees shall be credited to
22 the Health Care Financing Administration Pro-
23 gram Management Account.

24 “(C) OFFSET.—Any amount of fees col-
25 lected in a fiscal year under this subsection that

1 exceeds the amount of such fees available for
2 expenditure in such fiscal year, as specified in
3 appropriation Acts, shall be credited to the
4 Health Care Financing Administration Pro-
5 gram Management Account, and shall be avail-
6 able for obligation in subsequent fiscal years to
7 the extent provided in subsequent appropria-
8 tions Acts.

9 “(4) AVAILABILITY OF FEES.—Fees collected
10 pursuant to this subsection shall remain available
11 until expended, in the amounts provided in appro-
12 priation Acts, for the costs of the activities for which
13 they were assessed.”.

14 **SEC. 202. FEES FOR SURVEY AND CERTIFICATION.**

15 Section 1864(e) of the Social Security Act (42 U.S.C.
16 1395aa(e)) is amended to read as follows:

17 “(e) FEES FOR CONDUCTING CERTIFICATION SUR-
18 VEYS.—

19 “(1) AUTHORITY TO IMPOSE FEES.—Except as
20 provided in paragraph (6), to the extent provided in
21 appropriation Acts, the Secretary shall impose, or
22 require States as a condition of agreements under
23 this section to impose—

1 “(A) fees for surveys for the purpose of
2 making initial determinations as to whether en-
3 tities meet requirements under this title; and

4 “(B) annual fees to cover the costs of peri-
5 odic surveys to determine whether entities par-
6 ticipating in the program under this title con-
7 tinue to meet such requirements.

8 “(2) ASSESSMENT OF FEES.—

9 “(A) TYPES OF FEES.—

10 “(i) FEES FOR INITIAL SURVEYS.—

11 Fee amounts assessed pursuant to para-
12 graph (1)(A) against an entity in a class
13 and State shall not exceed the estimated
14 average cost of an initial survey and deter-
15 mination for an entity in such class and
16 State.

17 “(ii) FEES FOR RECERTIFICATION
18 SURVEYS.—

19 “(I) IN GENERAL.—Fee amounts
20 assessed pursuant to paragraph
21 (1)(B) against entities in a class in a
22 State shall not exceed the amount
23 which the Secretary reasonably esti-
24 mates will generate total revenues suf-
25 ficient to cover the applicable percent-

1 age specified in subclause (II) of total
2 annual costs for such surveys and de-
3 terminations with respect to such
4 class and State.

5 “(II) APPLICABLE PERCENT-
6 AGES.—For purposes of subclause (I),
7 the applicable percentage specified in
8 this subclause is—

9 “(aa) 33 percent for fiscal
10 year 1999;

11 “(bb) 66 percent for fiscal
12 year 2000; and

13 “(cc) 100 percent for fiscal
14 year 2001 and each succeeding
15 fiscal year.

16 “(B) FEE DETERMINATION AND PUBLICA-
17 TION.—

18 “(i) IN GENERAL.—The Secretary
19 shall annually establish fee amounts under
20 this subsection, and shall annually publish
21 schedules of such fees in the Federal Reg-
22 ister. The establishment and publication of
23 such fees shall be solely in the discretion of
24 the Secretary and shall not be subject to
25 the requirements of sections 553 and 801

of title 5, United States Code, and shall not be reviewable. Previously published fee schedules shall remain in effect until new schedules are effective.

“(ii) REDUCTION OR WAIVER OF FEES.—The Secretary may provide for reduction or waiver of the fees under this subsection in exceptional circumstances in the public interest.

“(3) COLLECTION AND CREDITING OF FEES.—

“(A) FEES FOR INITIAL SURVEYS.—

“(i) COLLECTION OF FEES.—Fees assessed against an entity in a State pursuant to paragraph (1)(A) shall be payable at the time of the initial survey to the Secretary (or, in the case of surveys performed by a State agency, to such agency).

“(ii) REMITTANCE OF FEE AMOUNT TO SECRETARY WHERE STATE COLLECTS FEES.—In the event a State agency collects a fee pursuant to clause (i), such agency shall remit to the Secretary an amount equal to the Secretary’s share of the cost of the activities described in paragraph (1)(A).

1 “(iii) CREDITING OF FEES.—Fees
 2 paid to the Secretary pursuant to clause (i)
 3 or remitted to the Secretary pursuant to
 4 clause (ii) shall be credited to the Health
 5 Care Financing Administration Program
 6 Management Account.

7 “(B) FEES FOR RECERTIFICATION SUR-
 8 VEYS.—

9 “(i) COLLECTION OF FEES.—Fees as-
 10 sessed against an entity pursuant to para-
 11 graph (1)(B) shall be payable annually and
 12 may be deducted from amounts otherwise
 13 payable from a Trust Fund under this title
 14 to such entity.

15 “(ii) REIMBURSEMENT OF STATE
 16 AGENCY COSTS.—Of amounts collected
 17 pursuant to clause (i), an amount equal to
 18 the State’s share of the cost of activities
 19 described in paragraph (1)(B) shall be
 20 transferred to the appropriate State agen-
 21 cy.

22 “(iii) REIMBURSEMENT OF SEC-
 23 RETARY’S COSTS.—The balance of the
 24 amount collected pursuant to clause (i)
 25 that is not paid to a State agency pursuant

1 to clause (ii) shall be credited to the
2 Health Care Financing Administration
3 Program Management Account.

4 “(C) OFFSET.—Any amount of fees col-
5 lected in a fiscal year under this subsection that
6 exceeds the amount of such fees available for
7 expenditure in such fiscal year, as specified in
8 appropriation Acts, shall be credited to the
9 Health Care Financing Administration Pro-
10 gram Management Account, and shall be avail-
11 able for obligation in subsequent fiscal years to
12 the extent provided in subsequent appropria-
13 tions Acts.

14 “(4) AVAILABILITY OF FEES.—Fees collected
15 pursuant to this subsection shall remain available
16 until expended, in the amounts provided in appro-
17 priation Acts, for necessary expenses related to the
18 purposes for which the fees were assessed.

19 “(5) TREATMENT OF FEES FOR PURPOSES OF
20 COST REPORTS.—An entity may not include a fee as-
21 sessed pursuant to this subsection as an allowable
22 item on a cost report under this title or title XIX.

23 “(6) CERTAIN ENTITIES NOT SUBJECT TO
24 FEE.—The Secretary shall not impose fees under
25 this subsection against entities subject to the re-

1 quirements of the Clinical Laboratory Improvement
2 Amendments of 1988.”.

3 **SEC. 203. FEES FOR REGISTRATION OF INDIVIDUALS AND**
4 **ENTITIES PROVIDING HEALTH CARE ITEMS**
5 **OR SERVICES UNDER MEDICARE.**

6 Section 1866 of the Social Security Act (42 U.S.C.
7 1395cc) is amended—

8 (1) in the heading, by adding “AND REGISTRA-
9 TION OF OTHER PERSONS FURNISHING SERVICES”
10 after “PROVIDERS OF SERVICES”; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(j) REGISTRATION PROCEDURES AND FEES.—

14 “(1) REGISTRATION.—The Secretary shall es-
15 tablish a procedure for initial registration and peri-
16 odic renewal of registration of individuals and enti-
17 ties that furnish items or services for which payment
18 may be made under this title and that are not other-
19 wise subject to provisions of this title providing for
20 such procedures.

21 “(2) FEES.—

22 “(A) AUTHORITY TO IMPOSE FEES.—The
23 Secretary shall impose, to the extent provided
24 in appropriation Acts—

1 “(i) fees for initial agreements with
 2 providers of services and initial registra-
 3 tions of other entities and individuals that
 4 furnish items or services for which pay-
 5 ment may be made under this title, and

6 “(ii) annual fees to cover the costs of
 7 renewals of agreements and registrations
 8 of such individuals and entities.

9 “(B) ASSESSMENT OF FEES.—

10 “(i) TYPES OF FEES.—

11 “(I) INITIAL FEES.—Fee
 12 amounts assessed pursuant to sub-
 13 paragraph (A)(i) against a member of
 14 a class of individuals or entities shall
 15 not exceed the Secretary’s reasonable
 16 estimate of the average cost of initiat-
 17 ing an agreement or performing an
 18 initial registration for an individual or
 19 entity in such class.

20 “(II) RENEWAL FEES.—Fee
 21 amounts assessed pursuant to sub-
 22 paragraph (A)(ii) against members of
 23 a class of individuals or entities shall
 24 not exceed the amount which the Sec-
 25 retary reasonably estimates will gen-

1 erate total revenues sufficient to cover
2 total annual costs of performing such
3 renewals with respect to such class.

4 “(ii) FEE DETERMINATION AND PUB-
5 LICATION.—

6 “(I) IN GENERAL.—The Sec-
7 retary shall annually establish fee
8 amounts under this paragraph, and
9 shall annually publish schedules of
10 such fees in the Federal Register. The
11 establishment and publication of such
12 fees shall be solely in the discretion of
13 the Secretary and shall not be subject
14 to the requirements of sections 553
15 and 801 of title 5, United States
16 Code, and shall not be reviewable.
17 Previously published fee schedules
18 shall remain in effect until new sched-
19 ules are effective.

20 “(II) REDUCTION OR WAIVER OF
21 FEES.—The Secretary may provide
22 for reduction or waiver of the fees
23 under this paragraph in exceptional
24 circumstances in the public interest.

1 “(C) COLLECTION AND CREDITING OF
2 FEES.—

3 “(i) INITIAL FEES.—Fees assessed
4 pursuant to subparagraph (A)(i) against
5 an individual or entity shall be payable
6 upon application for billing privileges
7 under the program under this title (and
8 shall apply whether or not the Secretary
9 approves such application) and shall be
10 credited to the Health Care Financing Ad-
11 ministration Program Management Ac-
12 count.

13 “(ii) RENEWAL FEES.—Fees assessed
14 pursuant to subparagraph (A)(ii) against
15 an individual or entity shall be payable an-
16 nually and may be deducted from amounts
17 otherwise payable from a Trust Fund
18 under this title to such individual or entity.
19 Such fees shall be credited to the Health
20 Care Financing Administration Program
21 Management Account.

22 “(iii) OFFSET.—Any amount of fees
23 collected in a fiscal year under this para-
24 graph that exceeds the amount of such fees
25 available for expenditure in such fiscal

1 year, as specified in appropriation Acts,
2 shall be credited to the Health Care Fi-
3 nancing Administration Program Manage-
4 ment Account, and shall be available for
5 obligation in subsequent fiscal years to the
6 extent provided in subsequent appropria-
7 tions Acts.

8 “(D) AVAILABILITY OF FEES.—Fees col-
9 lected pursuant to this paragraph shall remain
10 available until expended, in the amounts pro-
11 vided in appropriation Acts, for necessary ex-
12 penses related to initiating and renewing such
13 agreements and registrations, including costs
14 of—

15 “(i) establishing and maintaining pro-
16 cedures and records systems;

17 “(ii) processing applications;

18 “(iii) background investigations;

19 “(iv) renewal of billing privileges; and

20 “(v) reverification of eligibility.

21 “(E) TREATMENT OF FEES FOR PURPOSES
22 OF COST REPORTS.—An entity may not include
23 a fee assessed pursuant to this paragraph as an
24 allowable item on a cost report under this title
25 or title XIX.”.

1 **SEC. 204. FEES TO COVER THE COST OF MEDICARE DESK**
2 **REVIEW, AUDIT, AND COST SETTLEMENT AC-**
3 **TIVITIES.**

4 Section 1893 of the Social Security Act (42 U.S.C.
5 1395ddd) is amended by adding at the end the following
6 new subsection:

7 “(f) FEES FOR REVIEW, AUDIT, AND COST SETTLE-
8 MENT ACTIVITIES.—

9 “(1) AUTHORITY TO IMPOSE FEES.—The Sec-
10 retary shall impose fees on providers of services and
11 other entities furnishing items or services for which
12 payment may be made under this title for perform-
13 ance of review, audit, and cost settlement activities
14 in connection with the audit of cost reports under
15 subsection (b)(2).

16 “(2) ASSESSMENT OF FEES.—

17 “(A) IN GENERAL.—Fee amounts assessed
18 pursuant to paragraph (1) against members of
19 a class of entities shall not exceed the amount
20 which the Secretary reasonably estimates will
21 generate total revenues sufficient to cover total
22 annual costs for performing such activities with
23 respect to such class.

24 “(B) FEE DETERMINATION AND PUBLICA-
25 TION.—

1 “(i) IN GENERAL.—The Secretary
2 shall annually establish fee amounts under
3 this subsection, and shall annually publish
4 schedules of such fees in the Federal Reg-
5 ister. The establishment and publication of
6 such fees shall be solely in the discretion of
7 the Secretary and shall not be subject to
8 the requirements of sections 553 and 801
9 of title 5, United States Code, and shall
10 not be reviewable. Previously published fee
11 schedules shall remain in effect until new
12 schedules are effective.

13 “(ii) REDUCTION OR WAIVER OF
14 FEES.—The Secretary may provide for re-
15 duction or waiver of the fees under this
16 subsection in exceptional circumstances in
17 the public interest.

18 “(3) COLLECTION, CREDITING, AND AVAILABIL-
19 ITY OF FEES.—Fees assessed pursuant to paragraph
20 (1) against an entity shall be payable annually and
21 may be deducted from amounts otherwise payable
22 from a Trust Fund under this title to such entity.
23 Such fees shall be credited to the Health Care
24 Fraud and Abuse Control Account. Fees collected
25 pursuant to this subsection shall remain available

1 until expended, for necessary expenses for the pur-
2 poses for which the fees were assessed.

3 “(4) TREATMENT OF FEES FOR PURPOSES OF
4 COST REPORTS.—An entity may not include a fee as-
5 sessed pursuant to this subsection as an allowable
6 item on a cost report under this title or title XIX.”.

7 **SEC. 205. FEES FOR PROCESSING CLAIMS.**

8 (a) IN GENERAL.—Part D of title XVIII of the Social
9 Security Act is amended by adding at the end the follow-
10 ing new section:

11 **“SEC. 1897. FEES FOR PROCESSING CLAIMS.**

12 “(a) AUTHORITY TO IMPOSE FEES.—

13 “(1) IN GENERAL.—Subject to subsection (b),
14 each claim described in paragraph (2) submitted by
15 an individual or entity furnishing items or services
16 for which payment may be made under this title is
17 subject to a processing fee of \$1.00.

18 “(2) CLAIMS SUBJECT TO FEE.—A claim is
19 subject to the fee specified in paragraph (1) if it—

20 “(A) duplicates, in whole or in part, an-
21 other claim submitted by the same individual or
22 entity;

23 “(B) is a claim that cannot be processed
24 and must, in accordance with the Secretary’s
25 instructions, be returned by the fiscal inter-

1 mediary or carrier to the individual or entity for
2 completion; or

3 “(C) is not submitted electronically by an
4 individual or entity or the authorized billing
5 agent of such individual or entity.

6 “(b) COLLECTION, CREDITING, AND AVAILABILITY
7 OF FEES.—

8 “(1) APPROPRIATIONS REQUIRED.—Fees shall
9 be collected and expended under this section to the
10 extent provided in appropriation Acts.

11 “(2) DEDUCTION FROM TRUST FUND.—The
12 Secretary shall deduct any fees assessed pursuant to
13 subsection (a) against an individual or entity from
14 amounts otherwise payable from a Trust Fund
15 under this title to such individual or entity, and
16 shall transfer the amount so deducted from such
17 Trust Fund to the Health Care Financing Adminis-
18 tration Program Management Account.

19 “(3) OFFSET.—Any amount of fees collected in
20 a fiscal year under this section that exceeds the
21 amount of such fees available for expenditure in
22 such fiscal year, as specified in appropriation Acts,
23 shall be credited to the Health Care Financing Ad-
24 ministration Program Management Account, and
25 shall be available for obligation in subsequent fiscal

1 years to the extent provided in subsequent appro-
 2 priations Acts.

3 “(4) AVAILABILITY.—Fees collected pursuant
 4 to this section shall remain available until expended
 5 for the costs of the activities for which they were as-
 6 sessed.

7 “(c) WAIVER OF CERTAIN FEES.—The Secretary
 8 may provide for waiver of fees for claims described in sub-
 9 section (a)(2)(C) in cases of such compelling cir-
 10 cumstances as the Secretary may determine.

11 “(d) TREATMENT OF FEES FOR PURPOSES OF COST
 12 REPORTS.—An entity may not include a fee assessed pur-
 13 suant to this section as an allowable item on a cost report
 14 under this title or title XIX.”.

15 (b) CONFORMING AMENDMENT.—Section 1842(c)(4)
 16 of such Act (42 U.S.C. 1395u(c)(4)) is amended by strik-
 17 ing “Neither a carrier” and inserting “Except as provided
 18 in section 1897, neither a carrier”.

19 **SEC. 206. SECRETARY’S AUTHORITY TO ISSUE INTERIM**
 20 **FINAL REGULATIONS.**

21 The Secretary of Health and Human Services is au-
 22 thorized to issue any regulations needed to implement the
 23 amendments made by this title as interim final regula-
 24 tions.

1 **TITLE III—MISCELLANEOUS**
2 **USER FEES**

3 **SEC. 301. AUTHORITY OF SECRETARY OF AGRICULTURE TO**
4 **IMPOSE USER FEES FOR CERTAIN SERVICES**
5 **PROVIDED BY DEPARTMENT OF AGRI-**
6 **CULTURE AGENCIES.**

7 The Department of Agriculture Reorganization Act
8 of 1994 is amended by inserting after section 219 (7
9 U.S.C. 6919) the following new section:

10 **“SEC. 220. USER FEES FOR CERTAIN SERVICES PROVIDED**
11 **BY DEPARTMENT AGENCIES, OFFICES, OFFI-**
12 **CERS, AND EMPLOYEES.**

13 “(a) USER FEES AUTHORIZED.—Notwithstanding
14 any other provision of law, the Secretary may prescribe
15 and collect fees sufficient to cover all or some portion of
16 the cost to the Department, including administrative costs,
17 of providing services under the laws specified in subsection
18 (b).

19 “(b) COVERED LAWS.—Subsection (a) applies to the
20 following laws, notwithstanding any provision prohibiting
21 the imposition of user fees in any such law:

22 “(1) Laws administered by the Animal and
23 Plant Inspection Service (or any successor agency),
24 including the following specific services:

1 “(A) Biotechnology testing services under
2 the Federal Plant Pest Act (7 U.S.C. 150aa et
3 seq.).

4 “(B) Biotechnology testing services under
5 the Act of August 20, 1912 (commonly known
6 as the Plant Quarantine Act; 7 U.S.C. 151 et
7 seq.).

8 “(C) Animal welfare licensing services
9 under the Animal Welfare Act (7 U.S.C. 2131
10 et seq.).

11 “(D) Veterinary biologics services under
12 the Act of March 4, 1913 (commonly known as
13 the Virus-Serum-Toxin Act; 21 U.S.C. 151 et
14 seq.).

15 “(E) Services under the Swine Health Pro-
16 tection Act (7 U.S.C. 3801 et seq.).

17 “(2) Laws administered by the Grain Inspec-
18 tion, Packers and Stockyards Administration (or any
19 successor agency), including the following:

20 “(A) The Packers and Stockyards Act,
21 1921 (7 U.S.C. 181 et seq.).

22 “(B) The United States Grain Standards
23 Act (7 U.S.C. 71 et seq.).

1 “(3) Laws administered by the Food Safety and
2 Inspection Service (or any successor agency), includ-
3 ing the following:

4 “(A) The Federal Meat Inspection Act (21
5 U.S.C. 601 et seq.).

6 “(B) The Poultry Products Inspection Act
7 (21 U.S.C. 451 et seq.).

8 “(C) The Egg Products Inspection Act (21
9 U.S.C. 1031 et seq.).

10 “(4) Laws administered by the Natural Re-
11 sources Conservation Service (or any successor agen-
12 cy), including authorities regarding the provision of
13 technical assistance and products for natural re-
14 source conservation.

15 “(5) Laws administered by the Farm Service
16 Agency (or any successor agency), including the au-
17 thorities regarding the provision of information ob-
18 tained from information collections from persons
19 participating in the programs administered by the
20 Agency.

21 “(c) EXCEPTIONS.—Subsection (b) does not include
22 any law or service for which a user fee is specifically re-
23 quired or authorized under another provision of law.

24 “(d) LATE PAYMENT PENALTIES.—If a person sub-
25 ject to a fee under this section fails to pay the fee when

1 due, the Secretary may assess a late payment penalty, and
2 the overdue fees shall accrue interest, as required by sec-
3 tion 3717 of title 31, United States Code.

4 “(e) TREATMENT OF FEES.—Fees and other
5 amounts collected under this section shall be credited to
6 the Department accounts that incur the costs associated
7 with the provision of the services for which the fees are
8 imposed. Funds so credited shall be merged with the ap-
9 propriations to which credited and shall be available to the
10 Secretary without fiscal year limitation for the same pur-
11 poses as the appropriations with which merged.”.

12 **SEC. 302. NOAA NAVIGATION ASSISTANCE FEES.**

13 (a) ESTABLISHMENT AND COLLECTION.—

14 (1) IN GENERAL.—For fiscal year 1999 and
15 each fiscal year thereafter, the Secretary of Com-
16 merce, in consultation with the Secretary of Trans-
17 portation, shall establish, assess, and collect under
18 section 9701 of title 31, United States Code, fees for
19 the provision of navigation assistance services.

20 (2) FEE SCHEDULE.—The Secretary shall im-
21 plement fees under this section by establishment of
22 a schedule for such fees. The Secretary shall publish
23 an interim final rule containing an initial fee sched-
24 ule not later than 150 days after the date of the en-
25 actment of this Act.

1 (b) CREDITING OF FEES.—Fees collected under this
 2 section shall be credited as offsetting collections of the De-
 3 partment of Commerce.

4 (c) AVAILABILITY.—

5 (1) IN GENERAL.—Of amounts of offsetting col-
 6 lections credited for fees under this section—

7 (A) not to exceed \$2,500,000 shall be
 8 available to the Secretary of Commerce for fis-
 9 cal year 1999 for expenses of providing services
 10 for which the fees are collected; and

11 (B) amounts in excess of \$2,500,000 shall
 12 be available to the Secretary of Commerce for
 13 fiscal years after fiscal year 1999 for expenses
 14 of providing those services.

15 (2) AVAILABLE UNTIL EXPENDED.—Amounts
 16 available under this section shall remain available
 17 until expended.

18 **SEC. 303. FISHERIES MANAGEMENT AND ENFORCEMENT**
 19 **FEES.**

20 (a) ESTABLISHMENT AND COLLECTION.—

21 (1) IN GENERAL.—For fiscal year 1999 and
 22 each fiscal year thereafter, the Secretary of Com-
 23 merce shall establish, assess, and collect under sec-
 24 tion 9701 of title 31, United States Code, fees for

1 the provision of fisheries management and enforce-
2 ment services.

3 (2) MANNER OF COLLECTION.—The Secretary
4 may prescribe the manner in which such fees are
5 collected.

6 (b) MAXIMUM AMOUNT.—The maximum amount of
7 any fee under this section may not exceed one percent of
8 the ex-vessel value of harvested fish with respect to which
9 the fee is collected.

10 (c) CREDITING OF FEES.—Fees collected under this
11 section shall be credited as offsetting collections of the De-
12 partment of Commerce.

13 (d) AVAILABILITY.—

14 (1) IN GENERAL.—Of amounts of offsetting col-
15 lections credited for fees under this section—

16 (A) not to exceed \$19,781,000 shall be
17 available to the Secretary of Commerce for fis-
18 cal year 1999 for expenses of providing services
19 for which the fees are collected; and

20 (B) amounts in excess of \$19,781,000
21 shall be available to the Secretary of Commerce
22 for fiscal years after fiscal year 1999 for ex-
23 penses of providing those services.

1 (2) AVAILABLE UNTIL EXPENDED.—Amounts
2 available under this section shall remain available
3 until expended.

4 **SEC. 304. LEVEL OF FEES FOR PATENT SERVICES.**

5 (a) GENERAL PATENT FEES.—Section 41 of title 35,
6 United States Code, is amended by striking subsection (a)
7 and inserting the following:

8 “(a) The Commissioner shall charge the following
9 fees:

10 “(1)(A) On filing each application for an origi-
11 nal patent, except in design or plant cases, \$790.

12 “(B) In addition, on filing or on presentation at
13 any other time, \$82 for each claim in independent
14 form which is in excess of 3, \$22 for each claim
15 (whether independent or dependent) which is in ex-
16 cess of 20, and \$270 for each application containing
17 a multiple dependent claim.

18 “(C) On filing each provisional application for
19 an original patent, \$150.

20 “(2) For issuing each original or reissue patent,
21 except in design or plant cases, \$1,320.

22 “(3) In design and plant cases—

23 “(A) on filing each design application,
24 \$330;

1 “(B) on filing each plant application,
2 \$540;

3 “(C) on issuing each design patent, \$450;
4 and

5 “(D) on issuing each plant patent, \$670.

6 “(4)(A) On filing each application for the re-
7 issue of a patent, \$790.

8 “(B) In addition, on filing or on presentation at
9 any other time, \$82 for each claim in independent
10 form which is in excess of the number of independ-
11 ent claims of the original patent, and \$22 for each
12 claim (whether independent or dependent) which is
13 in excess of 20 and also in excess of the number of
14 claims of the original patent.

15 “(5) On filing each disclaimer, \$110.

16 “(6)(A) On filing an appeal from the examiner
17 to the Board of Patent Appeals and Interferences,
18 \$310.

19 “(B) In addition, on filing a brief in support of
20 the appeal, \$310, and on requesting an oral hearing
21 in the appeal before the Board of Patent Appeals
22 and Interferences, \$270.

23 “(7) On filing each petition for the revival of an
24 unintentionally abandoned application for a patent
25 or for the unintentionally delayed payment of the fee

1 for issuing each patent, \$1,320, unless the petition
2 is filed under section 133 or 151 of this title, in
3 which case the fee shall be \$110.

4 “(8) For petitions for 1-month extensions of
5 time to take actions required by the Commissioner
6 in an application—

7 “(A) on filing a first petition, \$110;

8 “(B) on filing a second petition, \$290; and

9 “(C) on filing a third petition or subse-
10 quent petition, \$550.

11 “(9) Basic national fee for an international ap-
12 plication where the Patent and Trademark Office
13 was the International Preliminary Examining Au-
14 thority and the International Searching Authority,
15 \$720.

16 “(10) Basic national fee for an international
17 application where the Patent and Trademark Office
18 was the International Searching Authority but not
19 the International Preliminary Examining Authority,
20 \$790.

21 “(11) Basic national fee for an international
22 application where the Patent and Trademark Office
23 was neither the International Searching Authority
24 nor the International Preliminary Examining Au-
25 thority, \$1,070.

1 “(12) Basic national fee for an international
2 application where the international preliminary ex-
3 amination fee has been paid to the Patent and
4 Trademark Office, and the international preliminary
5 examination report states that the provisions of Arti-
6 cle 33 (2), (3), and (4) of the Patent Cooperation
7 Treaty have been satisfied for all claims in the appli-
8 cation entering the national stage, \$98.

9 “(13) For filing or later presentation of each
10 independent claim in the national stage of an inter-
11 national application in excess of 3, \$82.

12 “(14) For filing or later presentation of each
13 claim (whether independent or dependent) in a na-
14 tional stage of an international application in excess
15 of 20, \$22.

16 “(15) For each national stage of an inter-
17 national application containing a multiple dependent
18 claim, \$270.

19 For the purpose of computing fees, a multiple dependent
20 claim referred to in section 112 of this title or any claim
21 depending therefrom shall be considered as separate de-
22 pendent claims in accordance with the number of claims
23 to which reference is made. Errors in payment of the addi-
24 tional fees may be rectified in accordance with regulations
25 of the Commissioner.”.

1 (b) PATENT MAINTENANCE FEES.—Section 41 of
2 title 35, United States Code, is amended by striking sub-
3 section (b) and inserting the following:

4 “(b) The Commissioner shall charge the following
5 fees for maintaining in force all patents based on applica-
6 tions filed on or after December 12, 1980:

7 “(1) 3 years and 6 months after grant, \$1,050.

8 “(2) 7 years and 6 months after grant, \$2,100.

9 “(3) 11 years and 6 months after grant,
10 \$3,160.

11 Unless payment of the applicable maintenance fee is re-
12 ceived in the Patent and Trademark Office on or before
13 the date the fee is due or within a grace period of 6
14 months thereafter, the patent will expire as of the end of
15 such grace period. The Commissioner may require the
16 payment of a surcharge as a condition of accepting within
17 such 6-month grace period the payment of an applicable
18 maintenance fee. No fee may be established for maintain-
19 ing a design or plant patent in force.”.

20 (b) AUTHORIZATION OF COLLECTION AND EXPENDI-
21 TURE.—Section 42(c) of title 35, United States Code, is
22 amended by striking the first sentence and inserting the
23 following: “To the extent and in the amounts provided in
24 advance in appropriations Acts, fees authorized in this
25 title or any other Act to be charged or established by the

1 Commissioner shall be collected by and shall be available
2 to the Commissioner to carry out the activities of the Pat-
3 ent and Trademark Office.”.

4 (c) EFFECTIVE DATE.—This section and the amend-
5 ments made by this section shall take effect on October
6 1, 1998.

7 **SEC. 305. EXPORT PROMOTION FEES.**

8 There is authorized to be appropriated to the Inter-
9 national Trade Administration of the Department of Com-
10 merce \$292,452,000, to remain available until expended,
11 of which \$6,000,000 shall be derived from fees to be col-
12 lected and used, to the extent provided in appropriation
13 Acts, by the International Trade Administration for the
14 provision of export promotion services, notwithstanding
15 section 3302 of title 31, United States Code. Any such
16 fees received in excess of \$6,000,000 in fiscal year 1999
17 shall remain available until expended, but shall not be
18 made available until October 1, 1999.

19 **SEC. 306. HARDROCK LOCATION AND MAINTENANCE FEES.**

20 Title X of the Omnibus Budget Reconciliation Act of
21 1993 (Public Law 103-66) is amended as follows:

22 (1) Section 10101(a) (30 U.S.C. 28f(a)) is
23 amended by striking the first sentence and inserting
24 “The holder of each unpatented mining claim, mill
25 or tunnel site, located pursuant to the mining laws

1 of the United States, whether located before or after
2 October 1, 1998, shall pay to the Secretary of the
3 Interior, on or before September 1 of each year, for
4 year 1999 and subsequent years, a claim maintenance fee of \$116 per claim or site.”.

6 (2) Section 10102 (30 U.S.C. 28g) is amended
7 by striking “and before September 30, 1998,” and
8 striking “\$25.00” and inserting “\$28”.

9 (3) Section 10105 (30 U.S.C. 28j) is amended
10 by adding the following new subsection at the end:
11 “(d) AVAILABILITY OF FEES.—Fees collected under
12 sections 10101 and 10102 (30 U.S.C. 28f and 28g) shall
13 be available without further appropriation for Mining Law
14 Administration program operations in the year following
15 their collection.”.

16 **SEC. 307. IMPOSITION AND USE OF DEPARTMENT OF**
17 **LABOR EMPLOYER FILING FEES UNDER THE**
18 **IMMIGRATION AND NATIONALITY ACT.**

19 Section 286 of the Immigration and Nationality Act
20 (8 U.S.C. 1356) is amended by adding at the end the following:
21

22 “(s) DEPARTMENT OF LABOR FEES FOR EMPLOYER-
23 RELATED FILINGS.—

24 “(1) Beginning in fiscal year 2000, the Secretary of Labor shall impose a fee on each person
25

1 filing with the Secretary an application for a labor
2 certification, an employer attestation, or any similar
3 petition or application, in order to meet a require-
4 ment or condition of a program under this title or
5 title I relating to the provision to an alien of an im-
6 migrant, or nonimmigrant, employment-based sta-
7 tus. The fee with respect a filing under a program
8 shall be in an amount prescribed by the Secretary
9 based on the costs of carrying out the Secretary's
10 duties (including enforcement-related functions) with
11 respect to the program.

12 “(2) Fees collected under this subsection shall
13 be deposited as an offsetting collection in a fund es-
14 tablished for this purpose in the Treasury of the
15 United States.

16 “(3) No amount shall be collected or obligated
17 for any fiscal year under this subsection, except to
18 the extent provided in appropriations Acts.

19 “(4) The fees in the fund collected with respect
20 to a program shall remain available until expended
21 to the Secretary, to the extent and in such amounts
22 as may be provided in appropriations Acts, to cover
23 the costs described in paragraph (1) with respect to
24 the program, in addition to any other funds that are
25 available to the Secretary to cover such costs.”.

1 **SEC. 308. COAST GUARD NAVIGATION ASSISTANCE FEES.**

2 (a) ESTABLISHMENT AND COLLECTION.—

3 (1) IN GENERAL.—For fiscal year 1999 and
4 each fiscal year thereafter, the Secretary of Trans-
5 portation shall establish, assess, and collect under
6 section 9701 of title 31, United States Code, fees for
7 the provision of navigation assistance services.

8 (2) FEE SCHEDULE.—The Secretary shall im-
9 plement fees under this section by establishment of
10 a schedule for such fees. The Secretary shall publish
11 an interim final rule containing an initial fee sched-
12 ule not later than 150 days after the date of the en-
13 actment of this Act.

14 (b) CREDITING OF FEES.—Fees collected under this
15 section shall be credited as offsetting collections of the De-
16 partment of Transportation.

17 (c) AVAILABILITY.—

18 (1) IN GENERAL.—Of amounts of offsetting col-
19 lections credited for fees under this section—

20 (A) not to exceed \$35,000,000 shall be
21 available to the Secretary of Transportation for
22 fiscal year 1999 for expenses of providing serv-
23 ices for which the fees are collected; and

24 (B) amounts in excess of \$35,000,000
25 shall be available to the Secretary of Transpor-

1 tation for fiscal years after fiscal year 1999 for
2 expenses of providing those services.

3 (2) AVAILABLE UNTIL EXPENDED.—Amounts
4 available under this section shall remain available
5 until expended.

6 **SEC. 309. SURFACE TRANSPORTATION BOARD.**

7 Section 721 of title 49, United States Code, is
8 amended by adding at the end the following new sub-
9 section:

10 “(f) USER FEES.—

11 “(1) SCHEDULE OF FEES.—The Board shall
12 prescribe by regulation a schedule of user fees for
13 carriers subject to the jurisdiction of the Board. The
14 fees—

15 “(A) shall cover the costs incurred by the
16 Board in carrying out its functions; and

17 “(B) shall be assessed on each carrier in
18 reasonable relationship to the relative benefits
19 received by the carriers from the functions of
20 the Board.

21 “(2) COLLECTION OF FEES.—The Board shall
22 prescribe procedures for the collection of fees under
23 this subsection. The Board may use the services of
24 a department, agency, or instrumentality of the Fed-
25 eral Government or of a State or local authority to

1 collect the fees, and may reimburse the department,
2 agency, or instrumentality a reasonable amount for
3 its services.

4 “(3) USE OF FEES.—Fees collected under this
5 subsection may be used, to the extent provided in
6 advance in appropriation Acts, by the Board for the
7 expenses of carrying out its functions. Any amounts
8 collected in a fiscal year in excess of the amount re-
9 quired for carrying out the functions of the Board
10 for that fiscal year may be retained for use by the
11 Board in a subsequent fiscal year.”.

12 **SEC. 310. WETLANDS PERMIT FEES.**

13 (a) ESTABLISHMENT AND COLLECTION.—The Sec-
14 retary of the Army shall establish and collect fees, from
15 applicants for commercial permits under section 404 of
16 the Federal Water Pollution Control Act, for evaluation
17 of applications for such permits, the preparation of envi-
18 ronmental impact statements under the National Environ-
19 mental Policy Act of 1969 in connection with the issuance
20 of such permits, and the delineation of wetlands for major
21 developments affecting wetlands.

22 (b) ARMY CIVIL WORKS REGULATORY PROGRAM.—
23 (1) ESTABLISHMENT.—There is established in
24 the Treasury of the United States a special account
25 to be known as the “Army Civil Works Regulatory

1 Program Account” into which fees collected by the
2 Secretary under subsection (a) shall be deposited.

3 (2) USE OF FEES.—Amounts deposited into the
4 Program Account shall be available to the Secretary,
5 as provided in appropriation acts, to apply toward
6 the costs incurred by the Department of the Army
7 in administering laws pertaining to the regulation of
8 navigable waters of the United States, including wet-
9 lands. Such amounts shall be in addition to appro-
10 priations otherwise available to the Secretary for ad-
11 ministering such laws.

12 **SEC. 311. RADIOLOGICAL PREPAREDNESS FEES.**

13 (a) ESTABLISHMENT OF RADIOLOGICAL EMERGENCY
14 PREPAREDNESS FUND.—There is established in the
15 Treasury of the United States a radiological emergency
16 preparedness fund which shall be available under the
17 Atomic Energy Act of 1954 and Executive Order No.
18 12657 for offsite radiological emergency planning, pre-
19 paredness, and response.

20 (b) FEES.—

21 (1) IN GENERAL.—For fiscal year 1999 and
22 each fiscal year thereafter, the Director of the Fed-
23 eral Emergency Management Agency shall establish
24 (by regulation), assess, and collect fees under this
25 subsection from persons subject to the radiological

1 emergency preparedness regulations issued by the
2 Director.

3 (2) AGGREGATE AMOUNT.—The aggregate
4 amount of fees assessed and collected under this
5 subsection during a fiscal year shall not be less than
6 the amounts anticipated by the Director to be nec-
7 essary to carry out the radiological emergency pre-
8 paredness program of the Federal Emergency Man-
9 agement Agency for such fiscal year.

10 (3) PROCEDURES.—The methodology for as-
11 sessment and collection of fees under this subsection
12 shall be fair and equitable. Such fees shall reflect
13 the costs of providing services, including administra-
14 tive costs of collecting fees.

15 (4) DEPOSIT.—Fees collected under this sub-
16 section shall be deposited in the radiological emer-
17 gency preparedness fund established under sub-
18 section (a) as offsetting collections. An amount equal
19 to the amount of fees so deposited shall become
20 available for authorized purposes on October 1 of
21 the fiscal year in which the fees are collected and
22 shall remain available until expended.

23 **SEC. 312. AVIATION ACCIDENT INVESTIGATION FEE.**

24 (a) ESTABLISHMENT AND COLLECTION.—For fiscal
25 year 1999 and each fiscal year thereafter the Chairman

1 of the National Transportation Safety Board shall estab-
2 lish, assess, and collect under section 9701 of title 31,
3 United States Code, fees from air carriers to partially
4 cover the costs of aviation accident investigations. Such
5 fees shall be established by publication of an initial pro-
6 posed fee schedule as an interim final rule in the Federal
7 Register not later than 150 days after the date of the en-
8 actment of this Act.

9 (b) MAXIMUM AMOUNT.—The maximum amount of
10 fees collected under this section shall not exceed
11 \$6,000,000 in any fiscal year.

12 (c) USE OF FEES.—Fees collected under this sub-
13 section shall be credited as offsetting collections to an ac-
14 count established in the Treasury of the United States for
15 such purpose and shall be available until expended for nec-
16 essary expenses for the National Transportation Safety
17 Board in conducting aviation accident investigations, in-
18 cluding the hiring of passenger motor vehicles and aircraft
19 and services authorized by section 3109 of title 5, United
20 States Code, but at rates for individuals not to exceed the
21 per diem rate equivalent to the rate as authorized by law
22 under sections 5901 and 5902 of such title.

1 **SEC. 313. MONETARY ASSESSMENT ON CLAIMANT REP-**
2 **RESENTATIVES UTILIZING THE SOCIAL SECU-**
3 **RITY ADMINISTRATION'S FEE APPROVAL AND**
4 **DIRECT PAYMENT PROCESSES.**

5 (a) REPRESENTATIVES OF TITLE II CLAIMANTS.—

6 (1) IN GENERAL.—Section 206 of the Social
7 Security Act (42 U.S.C. 406) is amended by adding
8 at the end the following new subsection:

9 “(d)(1) In any case in which a fee (exceeding zero)
10 of a person who renders services for compensation in con-
11 nection with a claim for entitlement to benefits under this
12 title is—

13 “(A) fixed by the Commissioner pursuant to the
14 last sentence of subsection (a)(1),

15 “(B) approved by the Commissioner pursuant
16 to subsection (a)(2)(A), or

17 “(C) determined and allowed by a court pursu-
18 ant to subsection (b)(1)(A),

19 the Commissioner shall assess such person an amount de-
20 termined in accordance with paragraph (2).

21 “(2) The amount of the assessment under paragraph
22 (1) shall be—

23 “(A) \$165 (or such different amount as the
24 Commissioner may prescribe by regulation), if the
25 Commissioner certifies payment of a fee to a person
26 described in paragraph (1) out of past-due benefits

1 payable under this title pursuant to subsection
2 (a)(4)(A) or (b)(1)(A) (or would so certify such pay-
3 ment but for a reduction to zero authorized by para-
4 graph (3)(A)), or

5 “(B) \$40 (or such different amount as the
6 Commissioner may prescribe by regulation) in any
7 other case.

8 “(3)(A) Notwithstanding section 3716 of title 31,
9 United States Code, and subsections (a)(4) and (b)(1)(A)
10 of this section, the Commissioner may reduce (to not below
11 zero) the amount otherwise subject to certification for pay-
12 ment as a fee to an attorney from past-due benefits in
13 order to recover any assessment or assessments under this
14 subsection owing by such attorney (without regard to
15 whether such assessments derive from the claim giving
16 rise to the past-due benefits in connection with which the
17 fee payment is subject to certification).

18 “(B) The Commissioner shall establish by regulation
19 procedures for the collection of assessments under this
20 subsection not recoverable as provided in subparagraph
21 (A).

22 “(4) Assessments collected under this subsection
23 shall be credited to a special trust fund receipt account
24 established in the Treasury of the United States for as-
25 sessments on representatives under this subsection. The

1 amounts so credited, to the extent and in the amounts pro-
 2 vided in advance in appropriations Acts, shall be available
 3 to defray expenses incurred in carrying out this title and
 4 related laws.

5 “(5) From amounts credited under paragraph (4) to
 6 the special account established in the Treasury of the
 7 United States for assessments on representatives under
 8 this subsection, there is authorized to be appropriated an
 9 amount not to exceed \$19,000,000 for fiscal year 1999,
 10 \$26,000,000 for fiscal year 2000, and such sums as may
 11 be necessary for each fiscal year thereafter, for adminis-
 12 trative expenses in carrying out this title and related
 13 laws.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 206(a)(4)(A) of such Act (42
 16 U.S.C. 406(a)(4)(A)) is amended by striking
 17 the period and inserting “, except that the
 18 amount otherwise subject to certification may
 19 be reduced (to not less than zero) pursuant to
 20 subsection (d)(3)(A).”.

21 (B) Section 206(b)(1)(A) of such Act (42
 22 U.S.C. 406(b)(1)(A)) is amended by striking
 23 the period at the end of the first sentence and
 24 inserting “, except that the amount otherwise
 25 subject to certification may be reduced (to not

1 less than zero) pursuant to subsection
2 (d)(3)(A).”.

3 (b) REPRESENTATIVES OF TITLE XVI CLAIMANTS.—
4 Section 1631(d)(2) of such Act (42 U.S.C. 1383(d)(2))
5 is amended by redesignating subparagraph (B) as sub-
6 paragraph (C) and by inserting after subparagraph (A)
7 the following new subparagraph:

8 “(B) The provisions of section 206(d) shall apply to
9 this part to the same extent as they apply in the case of
10 title II, except that—

11 “(i) references therein to title II shall be
12 deemed to be references to title XVI;

13 “(ii) references to entitlement to benefits under
14 title II shall be deemed to be references to eligibility
15 for benefits under this title;

16 “(iii) such provisions shall apply only with re-
17 spect to assessments applicable to cases other than
18 cases involving certification of payment of a fee to
19 a representative out of past-due benefits; and

20 “(iv) the total amount of the appropriations au-
21 thorized in paragraph (5) thereof for carrying out
22 this title and title II may not exceed \$19,000,000
23 for fiscal year 1999 and \$26,000,000 for fiscal year
24 2000.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to any person who, for a fee, rep-
 3 resents or otherwise assists a claimant with a claim arising
 4 under title II or title XVI of the Social Security Act, and
 5 whose representation of such claimant in connection with
 6 such claim commences on or after the 60th day following
 7 the date of the enactment of this Act.

8 **SEC. 314. RAILROAD SAFETY.**

9 Section 20115(e) of title 49, United States Code, is
 10 amended by striking “1995” and inserting “2003”.

11 **SEC. 315. INCREASE IN CUSTOMS MERCHANDISE PROCESS-**
 12 **ING FEE.**

13 Section 13031 of the Consolidated Omnibus Budget
 14 Reconciliation Act of 1985 (19 U.S.C. 58c) is amended
 15 as follows:

16 (1) Subsection (a)(9)(B)(i) is amended by strik-
 17 ing “0.21 percent nor less than 0.15 percent” and
 18 inserting “0.25 nor less than 0.15 percent”.

19 (2) Subsection (f) is amended—

20 (A) by redesignating paragraphs (4) and
 21 (5) as paragraphs (5) and (6), respectively;

22 (B) in paragraph (5), as so redesignated,
 23 by striking “paragraph (5)” and inserting
 24 “paragraph (6)”;

1 (C) by inserting after paragraph (3) the
 2 following:

3 “(4) Fees collected under subsection (a)(9) in excess
 4 of .21 percent ad valorem shall be available until expended
 5 for necessary expenses incurred by the Secretary of the
 6 Treasury for the National Customs Automation Program
 7 established under section 411 of the Tariff Act of 1930,
 8 in addition to amounts otherwise available for such pur-
 9 pose.”; and

10 (D) in paragraph (1)(B) by striking “para-
 11 graph (5)” and inserting “paragraph (6)”.

12 **SEC. 316. PESTICIDE REGISTRATION FEES.**

13 Section 4(i) of the Federal Insecticide, Fungicide,
 14 and Rodenticide Act (7 U.S.C. 136a–1(i)) is amended—

15 (1) in paragraph (6), by striking “(5)” and in-
 16 serting “(6)”;

17 (2) by redesignating paragraphs (6) and (7) as
 18 paragraphs (7) and (8), respectively; and

19 (3) by inserting after paragraph (5) the follow-
 20 ing:

21 “(6) REGISTRATION FEES.—

22 “(A) AUTHORITY TO LEVY FEE.—The Ad-
 23 ministrator may levy fees upon applicants for
 24 registration and amendments to registration
 25 under section 3 of this Act and applicants for

1 experimental use permits under section 5 of this
2 Act, pursuant to regulations similar to sections
3 152.410(b), 152.412, and 152.414 of title 40,
4 Code of Federal Regulations (as in effect as of
5 July 1, 1997), in amounts sufficient to cover
6 costs associated with the review of such applica-
7 tions.

8 “(B) TIME OF PAYMENT.—An applicant
9 upon whom a fee is levied under this paragraph
10 shall pay the fee at the time of application, un-
11 less otherwise specified by the Administrator.

12 “(C) EFFECT OF FAILURE TO PAY BY
13 TIME PRESCRIBED.—The Administrator may,
14 by order and without a hearing, deny the appli-
15 cation of any applicant who fails to pay, within
16 such time as the Administrator has prescribed,
17 any fee levied on the applicant under this para-
18 graph.

19 “(D) AUTHORITY TO REDUCE OR WAIVE
20 FEE.—The Administrator may reduce or waive
21 any fee that would otherwise be assessed under
22 this paragraph—

23 “(i) in connection with an application
24 for an active ingredient that is contained
25 only in pesticides for which registration is

1 sought solely for agricultural or non-
2 agricultural minor use; and

3 “(ii) in such other circumstances as
4 the Administrator determines to be in the
5 public interest.

6 “(E) USE OF FEES.—The Administrator
7 shall deposit in a special fund in the Treasury
8 of the United States all fees collected under this
9 paragraph, and the amount of such fees shall
10 be available, subject to appropriation, to carry
11 out the activities of the Environmental Protec-
12 tion Agency in the issuance of the registrations
13 under sections 3 and 5 in respect of which the
14 fees were paid.”.

15 **SEC. 317. CHEMICAL PRE-MANUFACTURING NOTIFICATION**
16 **FEES.**

17 Notwithstanding section 26(b)(1) of the Toxic Sub-
18 stances Control Act (15 U.S.C. 2625(b)(1)), the Adminis-
19 trator of the Environmental Protection Agency is author-
20 ized to assess, in fiscal year 1999 and thereafter, fees from
21 any person required to submit data under section 4 or 5
22 of such Act (15 U.S.C. 2603, 2604) without regard to the
23 dollar limitations established in section 26(b)(1) of such
24 Act. Such fees shall be calculated to cover costs associated
25 with administering those sections of such Act, and shall

1 be paid at the time of data submission, unless otherwise
 2 specified by the Administrator. The Administrator may
 3 take into account the ability to pay of the person required
 4 to submit the data and the cost to the Administrator of
 5 reviewing such data. The Administrator shall promulgate
 6 rules to implement this section. Such rules may provide
 7 for allocating the fee in any case in which the expenses
 8 of data submission under section 4 or 5 of such Act are
 9 shared. Increased fees collected under this section shall
 10 be deposited in a special fund in the United States Treas-
 11 ury, which thereafter will be available, subject to appro-
 12 priation, to carry out the Administration's activities for
 13 which such fees are collected.

14 **SEC. 318. NRC USER FEES AND ANNUAL CHARGES.**

15 Section 6101(a)(3) of the Omnibus Budget Reconcili-
 16 ation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by
 17 striking "September 30, 1998" and inserting "September
 18 30, 2003".

19 **SEC. 318. BANK EXAMINATION FEES.**

20 (a) **FDIC EXAMINATION FEES.**—Section 10(e)(1) of
 21 the Federal Deposit Insurance Act (12 U.S.C. 1820(e)(1))
 22 is amended to read as follows:

23 "(1) **IN GENERAL.**—

24 "(A) **REGULATORY EXAMINATIONS.**—Sub-
 25 ject to paragraph (6), the cost of conducting

1 any examination under subsection (b)(2) of an
2 insured depository institution described in sub-
3 paragraph (A) of such subsection shall be as-
4 sessed by the Corporation against the institu-
5 tion in an amount sufficient to meet the Cor-
6 poration's expenses in carrying out the exam-
7 ination.

8 “(B) INSURANCE EXAMINATIONS.—The
9 cost of conducting any examination of a deposi-
10 tory institution under subsection (b)(2) or
11 (b)(3), other than an examination to which sub-
12 paragraph (A) applies, may be assessed by the
13 Corporation against the institution to meet the
14 Corporation's expenses in carrying out the ex-
15 amination.”.

16 (b) FEDERAL RESERVE BOARD EXAMINATION
17 FEES.—The 2d sentence of the 8th undesignated para-
18 graph of section 9 of the Federal Reserve Act (12 U.S.C.
19 326) is amended—

20 (1) by striking “may, in the discretion of the
21 Board of Governors of the Federal Reserve System,
22 be assessed” and inserting “shall be assessed, sub-
23 ject to section 10(e)(6) of the Federal Deposit In-
24 surance Act,”; and

1 (2) by striking “and, when so assessed, shall be
2 paid” and inserting “and shall be paid”.

3 (c) REASONABLE REDUCTION IN EXAMINATION
4 FEES FOR STATE BANKS AND SAVINGS ASSOCIATIONS.—
5 Section 10(e) of the Federal Deposit Insurance Act (12
6 U.S.C. 1820(e)) is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(6) REDUCTIONS AND EXEMPTIONS.—

9 “(A) REDUCTION FOR DEPOSITORY INSTI-
10 TUTIONS SUBJECT TO DUAL SUPERVISION.—

11 “(i) IN GENERAL.—The amount of
12 any assessment or other fee imposed on
13 any State depository institution for an an-
14 nual regular examination—

15 “(I) by the Corporation under
16 paragraph (1)(A);

17 “(II) by the Board of Governors
18 of the Federal Reserve System under
19 the 8th undesignated paragraph of
20 section 9 of the Federal Reserve Act;
21 or

22 “(III) by the Director of the Of-
23 fice of Thrift Supervision under sec-
24 tion 9(a) of the Home Owners’ Loan
25 Act,

1 during any 12-month period may be re-
2 duced to the extent the agency determines
3 to be appropriate to reflect the fact that
4 the supervision of such State depository in-
5 stitution by an appropriate State bank su-
6 pervisor has reduced the need for Federal
7 supervision.

8 “(ii) LIMIT ON AMOUNT OF REDUC-
9 TION.—The amount of any reduction
10 under clause (i) with respect to any State
11 depository institution shall not exceed the
12 amount of an assessment or fee imposed
13 on such institution by the State bank su-
14 pervisor for the most recent examination of
15 the institution by the supervisor before
16 January 1, 1998 (or, in the case of an in-
17 stitution which was not subject to an ex-
18 amination by the State bank supervisor be-
19 fore such date, the amount which the ap-
20 propriate Federal banking agency reason-
21 ably determines would have been imposed
22 by such supervisor for an examination of
23 the institution as of such date).

24 “(iii) ADJUSTMENT FOR INFLA-
25 TION.—For purposes of clause (ii), the

amount described in such clause shall be adjusted annually after December 31, 1998, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

“(B) EXEMPTION FOR STATE DEPOSITORY INSTITUTIONS WITH ASSETS OF LESS THAN \$100,000,000.—Notwithstanding any other provision of law, no assessment or other fee for an annual regular examination may be imposed on any State depository institution which has total assets of less than \$100,000,000—

“(i) by the Corporation under paragraph (1)(A);

“(ii) by the Board of Governors of the Federal Reserve System under the 8th undesignated paragraph of section 9 of the Federal Reserve Act; or

“(iii) by the Director of the Office of Thrift Supervision under section 9(a) of the Home Owners’ Loan Act.”.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 10(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(2)) is amended by

1 inserting “an examination is required under sub-
 2 section (d)(1) or” after “whenever”.

3 (2) Section 10(d)(4) of the Federal Deposit In-
 4 surance Act (12 U.S.C. 1820(d)(4)) is amended by
 5 inserting “and subsection (e)(6)” after “(1), (2),
 6 and (3)”.

7 (e) REPORT ON FEES REQUIRED TO BE IMPOSED ON
 8 BANK HOLDING COMPANIES.—Before January 31 of each
 9 calendar year which begins after the date of the enactment
 10 of this Act, the Board of Governors of the Federal Reserve
 11 System shall submit a report to the Congress containing—

12 (1) the total costs incurred by the Board during
 13 the year preceding the year of such report which are
 14 attributable to each examination of a bank holding
 15 company conducted during such year pursuant to
 16 section 5(c) of the Bank Holding Company Act of
 17 1956; and

18 (2) the total amount assessed against, and paid
 19 by, each bank holding company under such section
 20 for the examination.

21 **SEC. 319. EXTENSION OF THE RECREATIONAL FEE DEM-**
 22 **ONSTRATION PROGRAM.**

23 (a) AUTHORITY.—The authority provided to the Na-
 24 tional Park Service under the recreational fee demonstra-

1 tion program authorized by section 315 of Public Law
2 104–134 (16 U.S.C. 460l–6a note)—

3 (1) is extended through September 30, 2005;
4 and

5 (2) shall be available for all units of the Na-
6 tional Park System, except that no recreational ad-
7 mission fee may be charged at Great Smoky Moun-
8 tains National Park and Lincoln Home National
9 Historic Site.

10 (b) REPORT.—

11 (1) IN GENERAL.—Not later than September
12 30, 2000, the Secretary of the Interior shall submit
13 to the Committee on Resources of the House of Rep-
14 resentatives and the Committee on Energy and Nat-
15 ural Resources of the Senate a report detailing the
16 status of the recreational fee demonstration program
17 conducted in national parks under section 315 of
18 Public Law 104–134 (16 U.S.C. 460l–6a note).

19 (2) CONTENTS.—The report under paragraph
20 (1) shall contain—

21 (A) an evaluation of the fee demonstration
22 program conducted at each national park;

23 (B) with respect to each national park, a
24 description of the criteria that were used to de-

1 termine whether a recreational fee should or
2 should not be charged at the national park; and
3 (C) a description of the manner in which
4 the amount of the fee at each national park was
5 established.

6 **SEC. 320. CONCESSIONS REFORM.**

7 (a) FINDINGS.—In furtherance of the Act of August
8 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1,
9 2–4), which directs the Secretary of the Interior to admin-
10 ister areas of the National Park System in accordance
11 with the fundamental purpose of preserving their scenery,
12 wildlife, natural and historic objects, and providing for
13 their enjoyment in a manner that will leave them
14 unimpaired for the enjoyment of future generations, the
15 Congress finds that the preservation and conservation of
16 park resources and values requires that such public ac-
17 commodations, facilities, and services as the Secretary de-
18 termines are necessary and appropriate in accordance with
19 this Act—

20 (1) should be provided only under carefully con-
21 trolled safeguards against unregulated and indis-
22 criminate use so that visitation will not unduly im-
23 pair these values; and

24 (2) should be limited to locations and designs
25 consistent to the highest practicable degree with the

1 preservation and conservation of park resources and
2 values.

3 (b) POLICY.—It is the policy of the Congress that—

4 (1) development on Federal lands within a park
5 shall be limited to those facilities and services that
6 the Secretary determines are necessary and appro-
7 priate for public use and enjoyment of the park in
8 which such facilities and services are located;

9 (2) development of such facilities and services
10 within a park should be consistent to the highest
11 practicable degree with the preservation and con-
12 servation of the park’s resources and values;

13 (3) such facilities and services should be pro-
14 vided by private persons, corporations, or other enti-
15 ties, except when no qualified private interest is will-
16 ing to provide such facilities and services;

17 (4) if the Secretary determines that develop-
18 ment should be provided within a park, such devel-
19 opment shall be designed, located, and operated in
20 a manner that is consistent with the purposes for
21 which such park was established;

22 (5) the right to provide such services and to de-
23 velop or utilize such facilities should be awarded to
24 the person, corporation, or entity submitting the

1 best proposal through a competitive selection proc-
2 ess; and

3 (6) such facilities or services should be provided
4 to the public at reasonable rates.

5 (c) DEFINITIONS.—As used in this section:

6 (1) The term “concessioner” means a person,
7 corporation, or other entity to whom a concession
8 contract has been awarded.

9 (2) The term “concession contract” means a
10 contract or permit (but not a commercial use au-
11 thorization issued pursuant to section 6) to provide
12 facilities or services, or both, at a park.

13 (3) The term “facilities” means improvements
14 to real property within parks used to provide accom-
15 modations, facilities, or services to park visitors.

16 (4) The term “park” means a unit of the Na-
17 tional Park System.

18 (5) The term “proposal” means the complete
19 proposal for a concession contract offered by a po-
20 tential or existing concessioner in response to the
21 minimum requirements for the contract established
22 by the Secretary.

23 (6) The term “Secretary” means the Secretary
24 of the Interior.

25 (d) REPEAL OF CONCESSION POLICY ACT OF 1965.—

1 (1) REPEAL.—The Act of October 9, 1965,
2 Public Law 89–249 (79 Stat. 969, 16 U.S.C. 20–
3 20g), entitled “An Act relating to the establishment
4 of concession policies administered in the areas ad-
5 ministered by the National Park Service and for
6 other purposes”, is hereby repealed. The repeal of
7 such section shall not affect the validity of any con-
8 tract entered into under such Act, but the provisions
9 of this Act shall apply to any such contract except
10 to the extent such provisions are inconsistent with
11 the express terms and conditions of the contract.

12 (2) CONFORMING AMENDMENT.—The fourth
13 sentence of section 3 of the Act of August 25, 1916
14 (16 U.S.C. 3; 39 Stat. 535) is amended by striking
15 all through “no natural” and inserting in lieu there-
16 of, “No natural”.

17 (e) CONCESSION POLICY.—Subject to the findings
18 and policy stated in subsections (a) and (b), and upon a
19 determination by the Secretary that facilities or services
20 are necessary and appropriate for the accommodation of
21 visitors at a park, the Secretary shall, consistent with the
22 provisions of this section, laws relating generally to the
23 administration and management of units of the National
24 Park System, and the park’s general management plan,
25 concession plan, and other applicable plans, authorize pri-

1 vate persons, corporations, or other entities to provide and
2 operate such facilities or services as the Secretary deems
3 necessary and appropriate.

4 (f) COMMERCIAL USE AUTHORIZATIONS.—

5 (1) IN GENERAL.—To the extent specified in
6 this section, the Secretary, upon request, may au-
7 thorize a private person, corporation, or other entity
8 to provide services to park visitors through a com-
9 mercial use authorization.

10 (2) CRITERIA FOR ISSUANCE OF AUTHORIZA-
11 TION.—(A) The authority of this subsection may be
12 used only to authorize provision of services that the
13 Secretary determines will have minimal impact on
14 park resources and values and which are consistent
15 with the purposes for which the park was established
16 and with all applicable management plans for such
17 park.

18 (B) The Secretary—

19 (i) shall require payment of a reasonable
20 fee for issuance for an authorization under this
21 subsection, such fees to remain available with-
22 out further appropriation to be used, at a mini-
23 mum, to recover associated management and
24 administration costs;

1 (ii) shall require that the provision of serv-
2 ices under such an authorization be accom-
3 plished in a manner consistent to the highest
4 practicable degree with the preservation and
5 conservation of park resources and values;

6 (iii) shall take appropriate steps to limit
7 the liability of the United States arising from
8 the provision of services under such an author-
9 ization; and

10 (iv) shall have no authority under this sub-
11 section to issue more authorizations than are
12 consistent with the preservation and proper
13 management of park resources and values, and
14 shall establish such other conditions for
15 issuance of such an authorization as the Sec-
16 retary determines appropriate for the protection
17 of visitors, provision of adequate and appro-
18 priate visitor services, and protection and prop-
19 er management of the resources and values of
20 the park.

21 (3) LIMITATIONS.—Any authorization issued
22 under this subsection shall be limited to—

23 (A) commercial operations with annual
24 gross revenues of not more than \$25,000 result-
25 ing from services originating and provided sole-

1 ly within a park pursuant to such authorization;
2 or

3 (B) the incidental use of park resources by
4 commercial operations which provide services
5 originating outside of the park's boundaries:
6 *Provided*, That such authorization shall not pro-
7 vide for the construction of any structure, fix-
8 ture, or improvement on Federal lands within
9 the park.

10 (4) DURATION.—The term of any authorization
11 issued under this subsection shall not exceed 2
12 years.

13 (5) OTHER CONTRACTS.—A person, corpora-
14 tion, or other entity seeking or obtaining an author-
15 ization pursuant to this subsection shall not be pre-
16 cluded from also submitting proposals for concession
17 contracts.

18 (g) COMPETITIVE SELECTION PROCESS.—

19 (1) IN GENERAL.—(A) Except as provided in
20 paragraph (2), and consistent with the provisions of
21 paragraph (7), any concession contract entered into
22 pursuant to this section shall be awarded to the per-
23 son, corporation, or other entity submitting the best
24 proposal as determined by the Secretary, through a

1 competitive selection process, as provided in this sec-
2 tion.

3 (B)(i) As soon as practicable after the date of
4 enactment of this Act, the Secretary shall promul-
5 gate appropriate regulations establishing the com-
6 petitive selection process.

7 (ii) The regulations shall include provisions for
8 establishing a procedure for the resolution of dis-
9 putes between the Secretary and a concessioner in
10 those instances where the Secretary has been unable
11 to meet conditions or requirements or provide such
12 services, if any, as set forth in a prospectus pursu-
13 ant to paragraph (3).

14 (2) TEMPORARY CONTRACT.—Notwithstanding
15 the provisions of paragraph (1), the Secretary may
16 award a temporary concession contract in order to
17 avoid interruption of services to the public at a park,
18 except that prior to making such a determination,
19 the Secretary shall take all reasonable and appro-
20 priate steps to consider alternatives to avoid such an
21 interruption.

22 (3) PROSPECTUS.—(A)(i) Prior to soliciting
23 proposals for a concession contract at a park, the
24 Secretary shall prepare a prospectus soliciting pro-
25 posals, and shall publish a notice of its availability

1 at least once in local or national newspapers or trade
2 publications, as appropriate, and shall make such
3 prospectus available upon request to all interested
4 parties.

5 (ii) A prospectus shall assign a weight to each
6 factor identified therein related to the importance of
7 such factor in the selection process. Points shall be
8 awarded for each such factor, based on the relative
9 strength of the proposal concerning that factor.

10 (B) The prospectus shall include, but need not
11 be limited to, the following information—

12 (i) the minimum requirements for such
13 contract, as set forth in subsection (d);

14 (ii) the terms and conditions of the exist-
15 ing concession contract awarded for such park,
16 if any, including all fees and other forms of
17 compensation provided to the United States by
18 the concessioner;

19 (iii) other authorized facilities or services
20 which may be provided in a proposal;

21 (iv) facilities and services to be provided by
22 the Secretary to the concessioner, if any, includ-
23 ing but not limited to, public access, utilities,
24 and buildings;

1 (v) minimum public services to be offered
2 within a park by the Secretary, including but
3 not limited to, interpretive programs, campsites,
4 and visitor centers; and

5 (vi) such other information related to the
6 proposed concession operation as is provided to
7 the Secretary pursuant to a concession contract
8 or is otherwise available to the Secretary, as the
9 Secretary determines is necessary to allow for
10 the submission of competitive proposals.

11 (4) MINIMUM PROPOSAL REQUIREMENTS.—(A)

12 No proposal shall be considered which fails to meet
13 the minimum requirements as determined by the
14 Secretary. Such minimum requirements shall in-
15 clude, but need not be limited to—

16 (i) the minimum acceptable franchise fee;

17 (ii) any facilities, services, or capital in-
18 vestment required to be provided by the conces-
19 sioner; and

20 (iii) measures necessary to ensure the pro-
21 tection and preservation of park resources.

22 (B) The Secretary shall reject any proposal,
23 notwithstanding the franchise fee offered, if the Sec-
24 retary determines that the person, corporation, or
25 entity is not qualified, is likely to provide unsatisfac-

1 tory service, or that the proposal is not responsive
2 to the objectives of protecting and preserving park
3 resources and of providing necessary and appro-
4 priate facilities or services to the public at reason-
5 able rates.

6 (C) If all proposals submitted to the Secretary
7 either fail to meet the minimum requirements or are
8 rejected by the Secretary, the Secretary shall estab-
9 lish new minimum contract requirements and re-ini-
10 tiate the competitive selection process pursuant to
11 this section.

12 (5) SELECTION OF BEST PROPOSAL.—(A) In
13 selecting the best proposal, the Secretary shall con-
14 sider the following principal factors:

15 (i) the responsiveness of the proposal to
16 the objectives of protecting and preserving park
17 resources and of providing necessary and appro-
18 priate facilities and services to the public at
19 reasonable rates;

20 (ii) the experience and related background
21 of the person, corporation, or entity submitting
22 the proposal, including but not limited to, the
23 past performance and expertise of such person,
24 corporation, or entity in providing the same or
25 similar facilities or services;

1 (iii) the financial capability of the person,
2 corporation, or entity submitting the proposal;
3 and

4 (iv) the proposed franchise fee: *Provided*,
5 That consideration of revenue to the United
6 States shall be subordinate to the objectives of
7 protecting and preserving park resources and of
8 providing necessary and appropriate facilities or
9 services to the public at reasonable rates.

10 (B) The Secretary may also consider such sec-
11 ondary factors as the Secretary deems appropriate.

12 (C) In developing regulations to implement this
13 Act, the Secretary shall consider the extent to which
14 plans for employment of Indians (including Native
15 Alaskans) and involvement of businesses owned by
16 Indians, Indian tribes, or Native Alaskans in the op-
17 eration of concession contracts should be identified
18 as a factor in the selection of a best proposal under
19 this section.

20 (6) CONGRESSIONAL NOTIFICATION.—(A) The
21 Secretary shall submit any proposed concession con-
22 tract with anticipated annual gross receipts in excess
23 of \$5,000,000 or a duration of 10 or more years to
24 the Committee on Resources of the United States
25 House of Representatives and the Committee on En-

1 ergy and Natural Resources of the United States
2 Senate.

3 (B) The Secretary shall not award any such
4 proposed contract until at least 60 days subsequent
5 to the notification of both Committees.

6 (7) NO PREFERENTIAL RIGHT OF RENEWAL.—

7 (A) Except as provided in subparagraph (B), the
8 Secretary shall not grant a preferential right to a
9 concessioner to renew a concession contract entered
10 into pursuant to this section.

11 (B)(i) The Secretary shall grant a preferential
12 right of renewal with respect to a concession con-
13 tract covered by paragraphs (8) and (9), subject to
14 the requirements of the appropriate subsection.

15 (ii) As used in this paragraph, and paragraphs
16 (8) and (9), the term “preferential right of renewal”
17 means that the Secretary shall allow a concessioner
18 satisfying the requirements of this paragraph (and
19 paragraphs (8) or (9), as appropriate) the oppor-
20 tunity to match the terms and conditions of any
21 competing proposal which the Secretary determines
22 to be the best proposal.

23 (iii) A concessioner who exercises a preferential
24 right of renewal in accordance with the requirements
25 of this subparagraph shall be entitled to award of

1 the new concession contract with respect to which
2 such right is exercised.

3 (8) OUTFITTING AND GUIDE CONTRACTS.—(A)

4 The provisions of paragraph (g)(2) shall apply
5 only—

6 (i) to a concession contract—

7 (I) which solely authorizes a conces-
8 sioner to provide outfitting, guide, river
9 running, or other substantially similar
10 services within a park; and

11 (II) which does not grant such conces-
12 sioner any interest in any structure, fix-
13 ture, or improvement pursuant to sub-
14 section (l); and

15 (ii) where the Secretary determines that
16 the concessioner has operated satisfactorily dur-
17 ing the term of the contract (including any ex-
18 tensions thereof); and

19 (iii) where the Secretary determines that
20 the concessioner has submitted a responsive
21 proposal for a new contract which satisfies the
22 minimum requirements established by the Sec-
23 retary pursuant to paragraph (4).

24 (B) With respect to a concession contract (or
25 extension thereof) covered by this subsection which

1 is in effect on the date of enactment of this Act, the
2 provisions of this paragraph shall apply if the holder
3 of such contract, under the laws and policies in effect
4 on the day before the date of enactment of this Act,
5 would have been entitled to a preferential right to
6 renew such contract upon its expiration.

7 (9) CONTRACTS WITH ANNUAL GROSS RECEIPTS
8 UNDER \$500,000.—(A) The provisions of paragraph
9 (7)(B) shall also apply to a concession contract—

10 (i) which the Secretary estimates will re-
11 sult in annual gross receipts of less than
12 \$500,000;

13 (ii) where the Secretary has determined
14 that the concessioner has operated satisfactorily
15 during the term of the contract (including any
16 extensions thereof); and

17 (iii) that the concessioner has submitted a
18 responsive proposal for a new concession con-
19 tract which satisfies the minimum requirements
20 established by the Secretary pursuant to para-
21 graph (4).

22 (B) The provisions of this paragraph shall not
23 apply to a concession contract which solely author-
24 izes a concessioner to provide outfitting, guide, river

1 running, or other substantially similar services with-
2 in a park pursuant to paragraph (8).

3 (10) NO PREFERENTIAL RIGHT TO ADDITIONAL
4 SERVICES.—The Secretary shall not grant a pref-
5 erential right to a concessioner to provide new or ad-
6 ditional services at a park.

7 (h) FRANCHISE FEES.—

8 (1) IN GENERAL.—Franchise fees shall not be
9 less than the minimum fee established by the Sec-
10 retary for each contract. The minimum fee shall be
11 determined in a manner that will provide the conces-
12 sioner with a reasonable opportunity to realize a
13 profit on the operation as a whole, commensurate
14 with the capital invested and the obligations as-
15 sumed under the contract.

16 (2) MULTIPLE CONTRACTS WITHIN A PARK.—If
17 multiple concession contracts are awarded to author-
18 ize concessioners to provide the same or similar out-
19 fitting, guide, river running, or other similar services
20 at the same approximate location or resource within
21 a specific park, the Secretary shall establish an iden-
22 tical franchise fee for all such contracts, subject to
23 periodic review and revision by the Secretary. Such
24 fee shall reflect fair market value.

1 (e) ADJUSTMENT OF FRANCHISE FEES.—The
2 amount of any franchise fee for the term of the con-
3 cession contract shall be specified in the concession
4 contract and may only be modified to reflect sub-
5 stantial changes from the conditions specified or an-
6 ticipated in the contract.

7 (i) USE OF FRANCHISE FEES.—

8 (1) DEPOSITS TO TREASURY.—All receipts col-
9 lected pursuant to this section shall be covered into
10 a special account established in the Treasury of the
11 United States. Except as provided in paragraph (2),
12 amounts covered into such account in a fiscal year
13 shall be available for expenditure, subject to appro-
14 priation, solely as follows:

15 (A) 50 percent shall be allocated among
16 the units of the National Park System in the
17 same proportion as franchise fees collected from
18 a specific unit bears to the total amount cov-
19 ered into the account for each fiscal year, to be
20 used for resource management and protection,
21 maintenance activities, interpretation, and re-
22 search.

23 (B) 50 percent shall be allocated among
24 the units of the National Park System on the
25 basis of need, in a manner to be determined by

1 the Secretary, to be used for resource manage-
2 ment and protection, maintenance activities, in-
3 terpretation, and research.

4 (2) SPECIAL ACCOUNT.—Beginning in fiscal
5 year 1998, all receipts collected in the previous year
6 in excess of the following amounts shall be made
7 available from the special account to the Secretary
8 without further appropriation, to be allocated among
9 the units of the National Park System on the basis
10 of need, in a manner to be determined by the Sec-
11 retary, to be used for resource management and pro-
12 tection, maintenance activities, interpretation, and
13 research:

14 (A) \$17,000,000 for fiscal year 1998.

15 (B) \$18,000,000 for fiscal year 1999.

16 (C) \$18,000,000 for fiscal year 2000.

17 (D) \$18,000,000 for fiscal year 2001.

18 (E) \$18,000,000 for fiscal year 2002.

19 (3) EXISTING CONCESSIONER IMPROVEMENT
20 FUNDS.—Nothing in this section shall affect or re-
21 strict the use of funds maintained by a concessioner
22 in an existing concessioner improvement account
23 pursuant to a concession contract in effect as of the
24 date of enactment of this Act. No new, renewed, or
25 extended contracts entered into after the date of en-

1 actment of this Act shall provide for or authorize the
2 use of such concessioner improvement accounts.

3 (4) INSPECTOR GENERAL AUDITS.—Beginning
4 in fiscal year 1998, the Inspector General of the De-
5 partment of the Interior shall conduct a biennial
6 audit of the concession fees generated pursuant to
7 this section. The Inspector General shall make a de-
8 termination as to whether concession fees are being
9 collected and expended in accordance with this Act
10 and shall submit copies of each audit to the Commit-
11 tee on Resources of the United States House of Rep-
12 resentatives and the Committee on Energy and Nat-
13 ural Resources of the United States Senate.

14 (j) DURATION OF CONTRACT.—

15 (1) MAXIMUM TERM.—A concession contract
16 entered into pursuant to this section shall be award-
17 ed for a term not to exceed 10 years: *Provided, how-*
18 *ever,* That the Secretary may award a contract for
19 a term of up to 20 years if the Secretary determines
20 that the contract terms and conditions necessitate a
21 longer term.

22 (2) TEMPORARY CONTRACT.—A temporary con-
23 cession contract awarded on a non-competitive basis
24 pursuant to subsection (f)(2) shall be for a term not
25 to exceed 2 years.

1 (k) TRANSFER OF CONTRACT.—

2 (1) IN GENERAL.—No concession contract may
3 be transferred, assigned, sold, or otherwise conveyed
4 by a concessioner without prior written notification
5 to, and approval of the Secretary.

6 (2) APPROVAL OF TRANSFER.—The Secretary
7 shall not unreasonably withhold approval of a trans-
8 fer, assignment, sale, or conveyance of a concession
9 contract, but shall not approve the transfer, assign-
10 ment, sale, or conveyance of a concession contract to
11 any individual, corporation or other entity if the Sec-
12 retary determines that—

13 (A) such individual, corporation or entity
14 is, or is likely to be, unable to completely satisfy
15 all of the requirements, terms, and conditions of
16 the contract;

17 (B) such transfer, assignment, sale or con-
18 veyance is not consistent with the objectives of
19 protecting and preserving park resources, and
20 of providing necessary and appropriate facilities
21 or services to the public at reasonable rates;

22 (C) such transfer, assignment, sale, or con-
23 veyance relates to a concession contract which
24 does not provide to the United States consider-

1 ation commensurate with the probable value of
2 the privileges granted by the contract; or

3 (D) the terms of such transfer, assign-
4 ment, sale, or conveyance directly or indirectly
5 attribute a significant value to intangible assets
6 or otherwise may so reduce the opportunity for
7 a reasonable profit over the remaining term of
8 the contract that the United States may be re-
9 quired to make substantial additional expendi-
10 tures in order to avoid interruption of services
11 to park visitors.

12 (l) PROTECTION OF CONCESSIONER INVESTMENT.—

13 (1) CURRENT CONTRACT.—(A) A concessioner
14 who before the date of the enactment of this Act has
15 acquired or constructed, or is required under an ex-
16 isting concession contract to commence acquisition
17 or construction of any structure, fixture, or improve-
18 ment upon land owned by the United States within
19 a park, pursuant to such contract, shall have a
20 possessory interest therein, to the extent provided by
21 such contract.

22 (B) Unless otherwise provided in such contract,
23 said possessory interest shall not be extinguished by
24 the expiration or termination of the contract and
25 may not be taken for public use without just com-

1 pensation. Such possessory interest may be assigned,
2 transferred, encumbered, or relinquished.

3 (C) Upon the termination of a concession con-
4 tract in effect before the date of enactment of this
5 title, the Secretary shall determine the value of any
6 outstanding possessory interest applicable to the con-
7 tract, such value to be determined for all purposes
8 on the basis of applicable laws and contracts in ef-
9 fect on the day before the date of enactment of this
10 Act.

11 (D) Nothing in this paragraph shall be con-
12 strued to grant a possessory interest to a conces-
13 sioner whose contract in effect on the date of enact-
14 ment of this Act does not include recognition of a
15 possessory interest.

16 (2) NEW CONTRACTS.—(A)(i) With respect to a
17 concession contract entered into on or after the date
18 of enactment of this Act, the value of any outstand-
19 ing possessory interest associated with such contract
20 shall be set at the value determined by the Secretary
21 pursuant to paragraph (1)(C).

22 (ii) As a condition of entering into a concession
23 contract, the value of any outstanding possessory in-
24 terest shall be reduced on an annual basis, in equal
25 portions, over the same number of years as the time

1 period associated with the straight line depreciation
2 of the structure, fixture, or improvement associated
3 with such possessory interest, as provided by appli-
4 cable Federal income tax laws and regulations in ef-
5 fect on the day before the date of enactment of this
6 Act.

7 (iii) In the event that the contract expires or is
8 terminated prior to the elimination of any outstand-
9 ing possessory interest, the concessioner shall be en-
10 titled to receive from the United States or the suc-
11 cessor concessioner payment equal to the remaining
12 value of the possessory interest.

13 (iv) A successor concessioner may not revalue
14 any outstanding possessory interest, nor the period
15 of time over which such interest is reduced.

16 (v) Title to any structure, fixture, or improve-
17 ment associated with any outstanding possessory in-
18 terest shall be vested in the United States.

19 (B)(i) If the Secretary determines during the
20 competitive selection process that all proposals sub-
21 mitted either fail to meet the minimum requirements
22 or are rejected (as provided in subsection (g)), the
23 Secretary may, solely with respect to any outstand-
24 ing possessory interest associated with the contract
25 and established pursuant to a concession contract

1 entered into prior to the date of enactment of this
2 Act, suspend the reduction provisions of paragraph
3 (2)(A)(i) for the duration of the contract, and re-initi-
4 tiate the competitive selection process as provided in
5 subsection (g).

6 (ii) The Secretary may suspend such reduction
7 provisions only if the Secretary determines that the
8 establishment of other new minimum contract re-
9 quirements is not likely to result in the submission
10 of satisfactory proposals, and that the suspension of
11 the reduction provisions is likely to result in the sub-
12 mission of satisfactory proposals: *Provided, however,*
13 That nothing in this paragraph shall be construed to
14 require the Secretary to establish a minimum fran-
15 chise fee at a level below the franchise fee in effect
16 for such contract on the day before the expiration
17 date of the previous contract.

18 (3) NEW STRUCTURES.—(A) On or after the
19 date of enactment of this Act, a concessioner who
20 constructs or acquires a new, additional, or replace-
21 ment structure, fixture, or improvement upon land
22 owned by the United States within a park, pursuant
23 to a concession contract, shall have an interest in
24 such structure, fixture, or improvement equivalent to
25 the actual original cost of acquiring or constructing

1 such structure, fixture, or improvement, less straight
2 line depreciation over the estimated useful life of the
3 asset according to Generally Accepted Accounting
4 Principles: *Provided*, That in no event shall the esti-
5 mated useful life of such asset exceed the deprecia-
6 tion period used for such asset for Federal income
7 tax purposes.

8 (B) In the event that the contract expires or is
9 terminated prior to the recovery of such costs, the
10 concessioner shall be entitled to receive from the
11 United States or the successor concessioner payment
12 equal to the value of the concessioner's interest in
13 such structure, fixture, or improvement. A successor
14 concessioner may not revalue the interest in such
15 structure, fixture, or improvement, the method of
16 depreciation, or the estimated useful life of the
17 asset.

18 (C) Title to any such structure, fixture, or im-
19 provement shall be vested in the United States.

20 (4) INSURANCE, MAINTENANCE, AND REPAIR.—
21 Nothing in this subsection shall affect the obligation
22 of a concessioner to insure, maintain, and repair any
23 structure, fixture, or improvement assigned to such
24 concessioner and to insure that such structure, fix-

1 ture, or improvement fully complies with applicable
2 safety and health laws and regulations.

3 (m) RATES AND CHARGES TO PUBLIC.—The reason-
4 ableness of a concessioner's rates and charges to the pub-
5 lic shall, unless otherwise provided in the bid specifications
6 and contract, be judged primarily by comparison with
7 those rates and charges for facilities and services of com-
8 parable character under similar conditions, with due con-
9 sideration for length of season, seasonal variance, average
10 percentage of occupancy, accessibility, availability and
11 costs of labor and materials, type of patronage, and other
12 factors deemed significant by the Secretary.

13 (n) CONCESSIONER PERFORMANCE EVALUATION.—

14 (1) REGULATIONS.—As soon as practicable
15 after the date of enactment of this Act, the Sec-
16 retary shall publish, after an appropriate period for
17 public comment, regulations establishing standards
18 and criteria for evaluating the performance of con-
19 cessions operating within parks.

20 (2) PERIODIC EVALUATION.—(A) The Sec-
21 retary shall periodically conduct an evaluation of
22 each concessioner operating under a concession con-
23 tract pursuant to this Act, as appropriate, to deter-
24 mine whether such concessioner has performed satis-
25 factorily. In evaluating a concessioner's performance,

1 the Secretary shall seek and consider applicable re-
2 ports and comments from appropriate Federal,
3 State, and local regulatory agencies, and shall seek
4 and consider the applicable views of park visitors
5 and concession customers. If the Secretary's per-
6 formance evaluation results in an unsatisfactory rat-
7 ing of the concessioner's overall operation, the Sec-
8 retary shall provide the concessioner with a list of
9 the minimum requirements necessary for the oper-
10 ation to be rated satisfactory, and shall so notify the
11 concessioner in writing.

12 (B) The Secretary may terminate a concession
13 contract if the concessioner fails to meet the mini-
14 mum operational requirements identified by the Sec-
15 retary within the time limitations established by the
16 Secretary at the time notice of the unsatisfactory
17 rating is provided to the concessioner.

18 (C) If the Secretary terminates a concession
19 contract pursuant to this section, the Secretary shall
20 solicit proposals for a new contract consistent with
21 the provisions of this Act.

22 (o) RECORDKEEPING REQUIREMENTS.—

23 (1) IN GENERAL.—Each concessioner shall keep
24 such records as the Secretary may prescribe to en-
25 able the Secretary to determine that all terms of the

1 concessioner's contract have been, and are being
2 faithfully performed, and the Secretary or any of the
3 Secretary's duly authorized representatives shall, for
4 the purpose of audit and examination, have access to
5 such records and to other books, documents, and pa-
6 pers of the concessioner pertinent to the contract
7 and all the terms and conditions thereof as the Sec-
8 retary deems necessary.

9 (2) GENERAL ACCOUNTING OFFICE REVIEW.—

10 The Comptroller General of the United States or
11 any of his or her duly authorized representatives
12 shall, until the expiration of five calendar years after
13 the close of the business year for each concessioner,
14 have access to and the right to examine any perti-
15 nent books, documents, papers, and records of the
16 concessioner related to the contracts or contracts in-
17 volved.

18 (p) EXEMPTION FROM CERTAIN LEASE REQUIRE-
19 MENTS.—The provisions of section 321 of the Act of June
20 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the
21 leasing of buildings and properties of the United States,
22 shall not apply to contracts awarded by the Secretary pur-
23 suant to this section.

1 (q) AUTHORIZATION OF APPROPRIATIONS.—There is
 2 authorized to be appropriated such sums as may be nec-
 3 essary to carry out this Act.

4 **SEC. 321. FEDERAL AVIATION ADMINISTRATION USER**
 5 **FEES.**

6 (a) USER FUNDING OF THE FEDERAL AVIATION AD-
 7 MINISTRATION.—Section 48104(a) of title 49, United
 8 States Code, is amended—

9 (1) in paragraph (1), by striking “; and” and
 10 inserting a semicolon;

11 (2) in paragraph (2), by striking the period at
 12 the end and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(3) any cost incurred by the Federal Aviation
 15 Administration after September 30, 1999, that is
 16 authorized by law.”.

17 (b) COST RECOVERY FOR FOREIGN AVIATION SERV-
 18 ICES AND CLARIFICATION OF OVERFLIGHT FEE AUTHOR-
 19 ITY.—Section 45301 of title 49, United States Code, is
 20 amended—

21 (1) in subsection (a)(2), by inserting “or to any
 22 entity obtaining services outside the United States”
 23 before the period; and

24 (2) by striking the period after “rendered” and
 25 inserting “, including both direct and indirect costs,

1 as determined by the Administrator, using generally
2 accepted accounting principles and internationally
3 accepted economic principles.”.

○